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No. .....

In the Supreme Court of the United States

OCTOBER TERM, 1974

PAUL PHILBROOK,
APPELLANT

vs.

JEAN GLODGETT, ET AL.,
APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellant Paul Philbrook, successor in office to Joseph Betit as Commissioner of the Vermont Department of Social Welfare,[1] appeals from the order of the three-judge United States District Court for the District of Vermont dated February 21, 1974. This statement is submitted to demonstrate that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

[1] In addition to Joseph Betit, who was named individually and as Commissioner, the defendants below included Elliott Richardson, individually and as Secretary of the United States Department of Health, Education, and Welfare. The plaintiffs included Jean and Deanna Glodgett, individually and on behalf of their minor child Tina; Roger, Sr. and Rosamond Percy, individually and on behalf of their minor children, Sharon, Sheila, Roger, Mary, Matthew, and Charon Percy; and Roger C. and Arlene M. Derosia, individually and on behalf of their minor children, Larry, Harold, Arthur, Mary and Brian Derosia. The named plaintiffs also sued on behalf of all others similarly situated.

OPINION BELOW

The opinion of the United States District Court is reported at 368 F. Supp. 211 (1973), and is attached hereto as Appendix A. The Court's order of judgment, which is not reported, is attached hereto as Appendix B.

JURISDICTION

This suit was brought in the United States District Court for the District of Vermont by appellees on behalf of themselves and all others similarly situated against the Commissioner of the Vermont Department of Social Welfare (the appellant herein) and the Secretary of the United States Department of Health, Education and Welfare. The action against the Commissioner was based on 42 U.S.C. §1983, and sought declaratory and injuctive relief and damages. Jurisdiction of the District Court over both defendants was invoked pursuant to 28 U.S.C. §1343 (3).

Appellees sought a declaration that 42 U.S.C. §607 (b) (2) (C) (ii)[2] and §2333.1(3) of the Vermont Welfare Assistance Manual[3] violate respectively the Due process Clause of the Fifth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment in that they deny benefits to families under the Unemployed Father provisions of the federal-state Aid to Needy Families with

[2] Section 407(b)(2)(C)(ii) of the Social Security Act of 1935, as amended, 82 Stat. 273. Since the District Court's opinion was written in terms of §607(b)(2)(C)(ii) of title 42 of the United States Code, the appellant will use this citation throughout as well.

[3] This provision is of state-wide applicability, promulgated pursuant to the provisions of 33 V. S. A. §§2504 (b) (3) and 2505 (c) (2).

[4] Vermont has chosen to refer to this program as "Aid to Needy Families with Children" rather than "Aid to Families with Dependent Children" as it is referred to in the Social Security Act and elsewhere. The Vermont program shall be referred to hereinafter as "ANFC." When reference is to the Unemployed Father provisions, the program shall be referred to as "ANFC-UF".

Children[4] program for those weeks in which an otherwise eligible father receives unemployment compensation. Since injunctive relief was sought against the enforcement of the above-mentioned federal statute and state regulation on constitutional grounds, a three-judge United States District Court was convened pursuant to the provisions of 28 U.S.C. §§2281-2282. The decision of the three-judge Court, however, was based on a construction of the statute and regulation, and the constitutional issues were not reached.

The judgment sought to be reviewed was entered on February 21, 1974. (Appendix B). Appellant's notice of appeal was filed on April 9, 1974, in the United States District Court for the District of Vermont. A copy of the notice of appeal is attached hereto as Appendix C.

The statutory provisions believed to confer jurisdiction on the Supreme Court to hear this direct appeal are 28 U.S.C. §§1253 and 2101(b).

Cases believed to sustain the jurisdiction are *Hagans v. Lavine*, 94 S. Ct. 1372 (1974); *Engineers v. Chicago, R. I. & P. R. Co.*, 382 U. S. 423 (1966); and *Florida Lime & Avacado Growers, Inc. v. Jacobsen*, 362 U.S. 73 (1960).

STATUTE AND REGULATION INVOLVED

42 U.S.C. §607(b)(2)(C)(ii) reads as follows:

> (b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title . . .
>
> (2) provides . . .
>
> (C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section . . .
>
> (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

The full text of 42 U.S.C. §607 is attached hereto as Appendix D.

Section 2333.1(3) of the Vermont Welfare Assistance Manual reads as follows:

> An "unemployed father" is one whose minor children are in need because he is out of work, is working part-time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that . . .
>
> (3) He is not receiving Unemployment Compensation during the same *week* as assistance is granted. [emphasis in original text]

The full text of §2333.1 is attached hereto as Appendix E.

QUESTION PRESENTED

1. Was the District Court correct in deciding that 42 U.S.C. §607(b)(2)(C)(ii) and §2333.1(3) of the Vermont Welfare Assistance Manual exclude families from ANFC-UF benefits for only those weeks in which an otherwise eligible father actually receives unemployment compensation, and thereby provide the father with the option of rejecting unemployment compensation for which he is qualified in favor of ANFC benefits, or must the father be ineligible for unemployment compensation before his family may be eligible for ANFC-UF?

STATEMENT OF THE CASE

1. Introduction

This case arises under Title IV-A of the Social Security Act of 1935, as amended, (42 U.S.C. §§601-610), which establishes the federal-state Aid to Families with Dependent Children (AFDC) program. The Social Security Act provides for substantial federal payments to states for the funding of state assistance programs on behalf of families with a dependent child or children. In order to be eligible for federal payments, however, there must be a "state plan" under

42 U.S.C. §602(a) which meets all of the relevant requirements of the statute and its implementing regulations.

For purposes of the AFDC program, a "dependent child" is defined in 42 U.S.C. §606(a) to mean, in part, a needy child who is deprived of parental support or care because of the death, continued absence from the home, or physical or mental incapacity of a parent.[5]

In addition, states are given the option[6] under 42 U.S.C. §607 (a)[7] to expand the definition of "dependent child" to include a needy child who has been deprived of parental support because of his father's unemployment. If a state plan provides for payments to families whose child is de-

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[5] 42 U.S.C. §606(a) reads as follows:

> The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment; . . .

[6] As of November, 1973, the Unemployed Father provisions were in effect in 24 states. See *Public Assistance Statistics November, 1973* DHEW Publication No. (SRS) 74-03100, NCSS Report A-2 (11/73), Table 8.

[7] 42 U.S.C. §607(a) reads as follows:

> The term "dependent child" shall, notwithstanding section 606 (a) of this title, include a needy child who meets the requirements of section 606 (a) (2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606 (a) (1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

pendent because of the father's unemployment, the state must, among other things, meet the requirements of §607 (b) (2) (C) (ii).

That section requires that a state plan provide for the denial of assistance to such families with respect to any week for which the child's father receives unemployment compensation under a state or federal unemployment compensation law. This provision is implemented by a regulation promulgated by the United States Department of Health, Education and Welfare, set forth at 45 C.F.R. §233.100(a) (5) (ii).[8]

The State of Vermont participates in the Unemployed Father segment of the AFDC program under an approved state plan. In order to comply with the above-mentioned requirements, the Vermont Department of Social Welfare has promulgated §2333.1(3) of the Welfare Assistance Manual which parallels 42 U.S.C. §607(b) (2) (C) (ii), and provides for the denial of ANFC-UF benefits for any week during which the unemployed father receives unemployment compensation.

2. Prior Proceedings

Appellees (plaintiffs below) are members (parents and minor children) of three Vermont families. Two of the families were terminated from the receipt of ANFC-UF benefits once the father began to receive weekly unemployment compensation. The third family's application for

[8] 45 C.F.R. §233.100 (a) (5) (ii) reads as follows:

(a) Requirements for State Plans. If a state wishes to provide AFDC for children of unemployed fathers, the state plan under Title IV — Part A of the Social Security Act must, except as specified in paragraph (b) of this section . . . (5) Provide for the denial of such aid to any such dependent child or the relative specified in section 406 (a) (1) of the Act [42 U.S.C. §606 (a) (1)] with whom such child is living, . . . (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

ANFC-UF was denied because the father, at the time of application, was receiving unemployment compensation. In each case the amount of weekly unemployment compensation was less than the amount the family had been receiving or would have received under ANFC.

Suit was brought on March 6, 1972, in United States District Court for the District of Vermont seeking declaratory and injunctive relief and damages. The action against the appellant was brought pursuant to the provisions of 42 U.S.C. §1983. The suit challenged the constitutionality of 42 U.S.C. §607(b) (2) (C) (ii) and §2333.1 (3) of the Vermont Welfare Assistance Manual alleging that the statute and regulation violated respectively the Due Process Clause of the Fifth Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment. The appellees alleged that the court had jurisdiction over the appellant under 28 U.S.C. §§1343(3) and (4) and 28 U.S.C. §1331, and over the federal defendant under 28 U.S.C. §1361 and 28 U.S.C. §1336. A three-judge Court was convened under 28 U.S.C. §§2281-2282.

At the oral argument held on March 5, 1973, appellees raised for the first time a statutory claim. They suggested that the families could avoid disqualification under §607 (b) (2) (C) (ii) and §2333.1(3) if the father refused to accept the unemployment compensation to which he was entitled. It was argued that the statutory and regulatory provisions exclude a family from eligibility only for those weeks in which the unemployed father actually receives unemployment compensation.

The three-judge Court determined that jurisdiction existed over both defendants under 28 U.S.C. §1343(3), but decided the case on the basis of the statutory claim, thereby avoiding a decision on the constitutional issues.

3. The District Court's Decision

In its opinion of October 17, 1973, the Court found that actual receipt of and not eligibility for unemployment compensation was controlling for ANFC-UF eligibility. From this determination, the Court concluded that an individual otherwise eligible for both programs could take his choice.[9]

The final order, issued February 21, 1974, enjoined appellant from denying ANFC-UF to any individual eligible for unemployment compensation in that it prohibited appellant from compelling any individual to avail himself of unemployment compensation benefits and required the appellant to advise applicants of this option. Even though the case was not certified as a class action, the order bound the appellant with respect to all others similarly situated.

Appellant's stay of execution of the judgment was granted on March 1, 1974, and his notice of appeal was filed on April 9, 1974.

THE QUESTIONS ARE SUBSTANTIAL

The District Court's interpretation that 42 U.S.C. §607 (b) (2) (C) (ii) and §2333.1(3) of the Vermont Welfare Assistance Manual provide an option whereby a father may reject unemployment compensation in order that his family may become eligible for AFDC benefits is erroneous.

It is the appellant's contention that the Court's construction of 42 U.S.C. §607 (b) (2) (C) (ii) and §2333.1 (3) of the Vermont Welfare Assistance Manual is incorrect. The Court fixed its attention on the word "receives" in the statute and regulation, and interpreted that word narrowly to mean *actual* receipt. Such an interpretation, however, is utterly unwarranted in the welfare area, as is demonstrated below.

[9] On January 8, 1974, the Court issued a supplemental opinion and order which, among other things, denied the appellant's motion for a new trial and appellees' motion for a rehearing with respect to the Court's denial of class action certification.

While as a general principle the ordinary meaning of statutory language should be given effect, a literal construction should not be followed when the result of such a construction can be shown to conflict with the intent of other relevant provisions of the same statutory scheme. *E.g.*, *Malat* v. *Riddell*, 383 U.S. 569, 571-72 (1966); *Richards* v. *United States*, 369 U.S. 1, 11 (1962). Such a conflict is present here.

In addition, when the intended scope of a statutory provision is called into question with respect to a particular set of facts, it is appropriate to consult the legislative history in order to determine Congressional intent. *E.g.*, *Allen* v. *State Board of Elections*, 393 U.S. 544, 570 (1969). Reviewing the legislative history is also necessary when a literal construction of a statute produces an extraordinary result. *E.g.*, *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 184 (1967). These principles are also applicable to the instant case.

1. The Court's interpretation creates an irreconcilable conflict between the provisions in question and other relevant provisions of the federal and state AFDC programs.

When 42 U.S.C. §607 (b) (2) (C) (ii) and §2333.1 (3) of the Vermont Welfare Assistance Manual are considered in relation to other relevant statutory and regulatory provisions, it becomes clear that the word "receives" as used in each is meant to encompass qualification for receipt,[10] as well as actual receipt.

A provision of primary relevance is 42 U.S.C. §602 (a) (7). When §607 (b) (2) (C) (ii) is read in concert with §602 (a) (7) and the latter's implementing regulations, there can be

[10] Repeated use of the term "qualification for receipt" or similar terms is made throughout. It is intended that an unemployed father is qualified to receive unemployment compensation if he would have been eligible to receive it upon filing an appropriate application.

no doubt that an unemployed father who is merely qualified to receive unemployment compensation is precluded from ANFC-UF eligibility.

42 U.S.C. §602(a)(7) provides that,

> A State plan for aid and services to needy families with children must . . . (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same house as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income.

In 1968, the year Congress first required the States to deny AFDC assistance to families in which the father received unemployment compensation,[11] the mandate of section 602(a)(7) was being implemented in the rules contained in the United States Department of Health, Education and Welfare (HEW) *Handbook of Public Assistance Administration (Handbook)*.[12] And since HEW is the federal agency charged with the administration of the Social Security Act, deference must be given to its interpretations. *E.g.*, *Lewis* v. *Martin*, *supra*, at 559.

With respect to developing potential income and resources for recipients under Titles I, IV, X, XIV, and XVI of the Social Security Act, the *Handbook* provided as follows:

> The State has the responsibility for establishing policies with reference to potential sources of income that can be developed to a state of availability. *Handbook*, Part IV, §3120 (1966).

[11] See note 15, *infra*, at 13.

[12] These rules have been viewed as authoritative in several cases, including *Shea* v. *Vialpando*, 42 U.S.L.W. 4559 (U.S. Apr. 23, 1974), *Lewis* v. *Martin* 397 U.S. 552 (1970), and *King* v. *Smith*, 392 U.S. 309 (1968).

In explaining this policy, the *Handbook* dealt with the question of whether, under the above-mentioned Titles, the wife of a beneficiary under Old Age, Survivors and Disability Insurance (OASDI) benefits or a woman with a wage record must apply for reduced OASDI benefits if she was between age 62 and 65, or whether she could wait until age 65 and receive full benefits. The *Handbook* stated that the woman had an option, but went on to say:

> The Federal Act, however, does not give any individual a right to have his needs met out of an assistance program because of his refusal to accept any resource that is available to him upon application. *Handbook*, Part IV, §3140(4) (1964).

The *Handbook* also outlined the appropriate treatment of "Other Statutory Benefits." It stated:

> In addition to OASDI, other statutory benefits to which applicants and recipients for public assistance may qualify, include *unemployment insurance*, temporary disability insurance, railroad retirement benefits, civil service retirement benefits, other government retirement benefits (Federal, State, county and local), and veterans benefits. [emphasis added]
>
> It is important that the State's policies and procedures for determining eligibility on the basis of need include clear instructions to staff for identifying cases in which such statutory benefits might be a resource, and, with respect to such cases, the process of determining the availability of such resources. *Handbook*, Part IV, §3140(6) (1964).

These *Handbook* provisions have now been superseded by HEW regulations which require that ". . . only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered . . ." 45 C.F.R. §233.20(a)(3)(ii)

(c). Also, the state plan must "[p]rovide that the agency will establish and carry out policies with reference to applicants' and recipients' potential sources of income that can be developed to a state of availability." 45 C.F.R. §233.20(a)(3)(ix).

Thus, the states have always had a clear obligation to take into consideration in determining eligibility all available sources of income, including unemployment compensation, under §602(a)(7) and its implementing regulations.[13] Therefore, it was unnecessary for Congress in 1968 to enact §607(b)(2)(C)(ii) in terms of both "receives" and "qualified to receive." The word "receives" by itself was sufficient to carry forward the policy then in effect. To have included words such as "qualified to receive" would have been redundant.

In Vermont there has never been any confusion on this point. The Department of Social Welfare has always interpreted the federal statute and regulations to require the denial of ANFC eligibility when an unemployed father was qualified to receive unemployment compensation benefits. Although, like the federal statute, §2333.1(3) of the Welfare Assistance Manual is drafted solely in terms of receipt of unemployment compensation, other sections of the Manual parallel the federal provisions and make it clear that the word "receives" is intended to include the qualification for receipt. In any event, this is how the regulation has been applied.[14]

[13] This point was recently reiterated by Mr. Justice Powell in *Shea* v. *Vialpando*, *supra*, at 4562. He stated: "Congress has been careful to ensure that *all* of the income and resources properly attributable to a particular applicant be taken into account . . ." [emphasis in original text]

[14] It should be pointed out that the receipt or availability of other types of income or resources would not necessarily work a complete disqualification for ANFC benefits as would the receipt or availability of unemployment compensation. This fact merely demonstrates, however, that Congress intended to continue to treat as mutually exclusive the unemployment compensation program and the AFDC program. This point is discusssed, *infra*, at 16.

Thus, pursuant to §2270 of the current Manual,[15]

> All potential sources of income and/or resources to meet current or future needs of applicant(s)/recipient(s) shall be explored, identified, and if feasible, developed. The applicant/recipient shall be encouraged to take the initiative, when able, to secure such income and/or resources for himself, with the assistance, if needed, of department staff.
>
> Practical and feasible steps in identifying and developing potential income and/or resources include, but are not limited to the following . . .
> 2. Filing applications for benefits to which the individual may be entitled.

2. The Court's interpretation is contradictory to relevant legislative history.

The legislative history of §607(b)(2)(C)(ii), while limited, indicates that Congress intended to exclude from AFDC eligibility those families in which the unemployed father either receives or is qualified to receive unemployment compensation.

Prior to January, 1968, when Congress first required that states deny AFDC assistance to families when the father receives unemployment compensation, states had been given the option of denying all or any part of such assistance when unemployment compensation was received.[16] In the House

[15] Section 2270 states the general policy that has been in effect since Vermont began participating in the ANFC-UF program in July, 1968.

[16] As originally enacted in 1961, Congress temporarily expanded the definition of "dependent child" to include a child whose dependency was caused by the unemployment of a parent. The expanded definition was optional with the states, as it is today. Those states that chose to provide assistance under the expanded definition were given the option of providing for the denial of all or any part of the AFDC assistance

version of the January, 1968 amendment to the Social Security Act, (the version which was ultimately enacted), states were required to deny assistance if and for so long as the unemployed father received unemployment compensation. The amendment passed by the Senate, however, retained the option provision then in effect. The Conference Committee's report explained the import of both versions as follows:

> "Unemployed Fathers under AFDC"
>
> Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203(a) of the House bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to *exclude* fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid, *and fathers who receive (or are qualified to receive) any unemployment compensation under state law.* [emphasis added]
>
> *The Senate amendments removed these exclusions, and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month.* (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill). The Senate recedes (except on the conforming amendments and effective date provisions). H. R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967) [emphasis added].

for any month if the unemployed parent received unemployment compensation for any week during that month. Act of May 8, 1961, Pub. L.87-31, §1, 75 Stat. 75.

These provisions were extended for five years in 1962. Act of July 25, 1962, Pub. L. 87-543, Title I, §131(a), 76 Stat. 193.

In 1967, Congress extended the termination date from June 30, 1967 to June 30, 1968. Act of June 29, 1967, Pub. L. 90-36, §2, 81 Stat. 94.

In 1968, the provisions were amended twice. The first change provided for the application of the provisions to unemployed fathers rather than unemployed parents if and as long as the child's father received unemployment compensation. Act of January 2, 1968, Pub. L. 90-248, Title II, §203(a), 81 Stat. 882. The second change added the present language which prohibits the payment of AFDC benefits on the basis of the father's unemployment with respect to any week for which the father receives unemployment compensation. Act of June 28, 1968, Pub. L. 90-364, Title III, §302, 82 Stat. 273.

Thus, it is apparent that the Conference Committee understood the House version to "exclude" from AFDC eligibility those fathers who "receive" unemployment compensation as well as those who are "qualified to receive" unemployment compensation. In addition, the fact that the words "or are qualified to receive" are enclosed within parentheses suggests that the Conference Committee realized that the word "receives" as used in the amendment included both the actual receipt and the qualification for such receipt.

This interpretation is entirely consistent with what Congress was attempting to accomplish. The report of the House Committee on Ways and Means leaves no doubt that its primary purpose in amending the Unemployed Father provisions of the AFDC program was to reduce the welfare rolls.[17] One of the ways to effectuate this objective was to preclude AFDC eligibility to families in which the father was receiving (or qualified to receive) unemployment compensation.

With this clear purpose in mind, it would make little sense to deny eligibility to families of actual recipients while granting eligibility to families in which the father was qualified to receive unemployment compensation but chose not to apply.

[17] H. R. Rep. No. 544, 90th Cong., 1st Sess. 2 (1967)

3. The Court's interpretation undermines the traditional separateness of the unemployment compensation program and AFDC.

The interpretation of §607(b)(2)(C)(ii) which the District Court advances is inconsistent with the traditional relationship between the unemployment compensation program and AFDC. Historically, the two concepts have been considered mutually exclusive.

The purposes of unemployment compensation are outlined by Chief Justice Burger in *California Department of Human Resources Development* v. *Java*, 402 U.S. 121 (1971), wherein he quotes relevant excerpts from the legislative history of the unemployment compensation provisions of the Social Security Act as originally enacted in 1935. He states:

> The Social Security Act received its impetus from the Report of the Committee on Economic Security, [footnote omitted] which was established by executive order of President Franklin D. Roosevelt to study the whole problem of financial insecurity due to unemployment, old age, disability, and health. In its report, transmitted to Congress by the President on January 17, 1935, the Committee recommended a program of unemployment insurance compensation as a "first line of defense for . . . [a worker] ordinarily steadily employed . . . for a limited period during which there is expectation that he will soon be reemployed. This should be a contractual right not dependent on any means test . . . It will carry workers over most, if not all, periods of unemployment in normal times *without resort to any other form of assistance*." [footnote omitted] 402 U.S. at 130-31 [emphasis added].

And continuing at 131-32:

> The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed, to enable workers "to tide themselves over, until they get back to their old work or find other employment, *without having to resort to relief*." [footnote omitted] Unemployment benefits provide cash to a newly unemployed worker "at a time when otherwise he would have nothing to spend," [footnote omitted] serving to maintain the recipient at subsistence levels *without the necessity of his turning to welfare or private charity*. [emphasis added].

Clearly then, unemployment compensation was originally, and still is, intended to be an alternative to public assistance.

This fact is also supported in the legislative history of the AFDC program. The Aid to Dependent Children program, as it was originally called, was also created in the Social Security Act of 1935. The report of the Senate Committee on Finance, in discussing the aid to children provisions of H.R. 7260, the bill that was enacted, stated as follows:

> The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures for the security of children. Unemployment compensation, for instance, will benefit many children in the homes of unemployed workers; and even old-age pensions and old age benefits will in many cases indirectly aid children in families whose resources have been drained for the support of aged grandparents.
>
> In addition, however, there is great need for special safeguards for many underprivileged children . . . S. Rep. No. 628, 74th Cong., 1st Sess. (1935)

From this language it is apparent that the Aid to Dependent Children program was not intended to assist the same category of children that would be benefited by unemployment compensation. The Aid to Dependent Children program was meant to cover children who were not members of families in which the father was eligible for unemployment compensation.

This distinction was somewhat obscured in 1961 when

Congress first expanded the definition of "dependent child" to include children of unemployed parents and gave states the option of treating unemployment compensation as they saw fit.[18] In 1968, however, the traditional separateness of the two programs was clearly reestablished. Thereafter, under 42 U.S.C. §607(b)(2)(C)(ii) the receipt (or qualification for receipt) of unemployment compensation acted as a complete bar to AFDC eligibility, rather than merely a factor to be considered. Only after the father became ineligible for unemployment compensation for which he was qualified, could his family become eligible for AFDC.

In *Burr* v. *Smith*, 322 F. Supp. 980 (W. D. Wash 1971), *aff'd mem.* 404 U.S. 1027 (1972), apparently the only other case in which 42 U.S.C. §607(b)(2)(C)(ii) has been involved, the Court addressed itself to the reasonableness of this separate treatment by stating:

> Many legitimate state interests arguably are served by relying exclusively upon unemployment compensation in the first instance. For example, primary reliance on unemployment reserves frees limited state funds for other uses, including the procurement of matching federal funds for public assistance program; the receipt of insurance benefits to which they have contributed may be better

[18] While the language of the pre-1968 statute does provide an option, the legislative history suggests that Congress did not in fact have this in mind. The provision which was ultimately enacted was added by the Senate Finance Committee after the legislation had been passed by the House. No public hearings were held, and the Committee report (S. Rep. No. 165, 87th Cong., 1st Sess. (1961)) sheds no light on the subject. During the floor debate, however, Senator McCarthy, a member of the Finance Committee, in response to a telegram critical of the Committee amendments, said the following:

> Mr. President, this is a temporary program to meet an emergency situation. Its purpose is to assist those families where the wage earner has exhausted his unemployment compensation or never had coverage. 107 Cong. Rec. 6400-01 (1961).

> for the morale of unemployed workers than would be dependence upon or even eligibility to receive welfare assistance; the receipt of unemployment compensation, which is temporary in nature, may act as a greater incentive for the unemployed to seek new employment than the receipt of welfare assistance.
>
> It is not our purpose here to list all the considerations which might justify the legislature's reliance on unemployment compensation. Our only purpose is to indicate that there are reasonable arguments which might form the legitimate legislative base for treating recipients of unemployment compensation differently from recipients of other income sources. [citation omitted] 322 F. Supp., at 985.

Although the Court in *Burr* was speaking only to the reasonableness of Washington's regulation, the rationale is equally applicable with respect to §607(b)(2)(C)(ii) as applied in the present case. The result of the District Court's ruling, however, would be to obliterate the clearly intended and rational distinction between the two programs.

4. The Court's interpretation is in complete conflict with the decision in BURR v. SMITH, 322 F. Supp. 980 (W. D. Wash 1971), aff'd mem. 404 U.S. 1027 (1972).

In *Burr* v. *Smith*, plaintiffs challenged on constitutional grounds a Washington statute and welfare regulation. The regulation was remarkably similar to the Vermont regulation in question here; it denied AFDC assistance to families in which the father received or was eligible to receive unemployment compensation. The regulation was based on 42 U.S.C. §607(b)(2)(C)(ii), as is Vermont's.

While the federal statute was not directly in issue, the three-judge District Court found no conflict between the statute and the state regulation, stating that the challenged regulation "was promulgated in direct response to the federal

provision." 322 F. Supp., at 983. Moreover, the Court determined that the regulation did not violate the Equal Protection Clause of the Fourteenth Amendment. The decision was affirmed by this Court without opinion.

The obvious result of this Court's affirmance has been to permit Washington to continue to carry out the mandate of 42 U.S.C. §607(b)(2)(C)(ii) by excluding from AFDC benefits those families in which father qualifies for unemployment compensation.

By contrast, the District Court's decision in the instant case has precluded Vermont from denying such families ANFC benefits. The decision was based on a construction of the same federal statute, and a Vermont regulation identical in effect to Washington's. Thus, the Court's decision in this case clearly conflicts with the decision in *Burr* v. *Smith*.

5. The Court's interpretation produces extraordinary results in that it would (a) shift the clear burden of supporting unemployed fathers and their families from employer contributions to welfare appropriations, (b) unjustly enrich former employers of unemployed fathers, and (c) encourage "program shopping."

If the Court's interpretation of the statute and regulation is followed, an obvious result would be to drastically shift the burden of supporting families of unemployed fathers from the unemployment compensation program to the AFDC program in those cases where the father is eligible for either and the welfare benefits prove to be higher.[19] The total onus would be forced upon the already strained welfare budgets, while accumulated unemployment compensation funds would remain intact. Surely, it would appear more logical from a social policy perspective to allocate these limited welfare appropriations to those families which have no

[19] In addition to weighing the monetary consideration, the individual would have to consider Medicaid and Food Stamp benefits which would be automatically available to members of his family as ANFC recipients.

alternative source of income. This is especially true where there is no suggestion whatsoever that Congress intended to alter the relative responsibilities of the programs.

As a related consequence, those former employers of unemployed fathers who are required by law to contribute to the unemployment compensation trust fund would be unjustly enriched. Since such fathers would be permitted to forego completely the unemployment compensation to which they are entitled, these employers would benefit over time through reduced rates of contribution.[20] It is highly doubtful that Congress intended such a potential windfall to employers at the expense of the taxpayer.[21]

In addition, the District Court's decision would encourage "program shopping." An unemployed father would be in a position to evaluate the relative benefits under each program, and apply for the most advantageous. The success of this approach, however, would depend on knowledgeable, well-informed applicants. Yet it is unlikely that the newly unemployed father would have sufficient information on which to make a reasonable choice. Under the Court's order, only those fathers who actually apply for ANFC benefits would be advised of their option; those who apply for

[20] In Vermont, those employers who are required to contribute do so according to a rate schedule which is determined by the amount paid in to the trust fund versus the amount paid out in benefits. Basically the less paid out, the lower the rate. (Vermont's unemployment compensation program is established under the provisions of 21 V.S.A. §1301, et seq. Rates of employer contributions are established under §§1324-27.)

[21] In an affidavit filed in the District Court, appellant Philbrook estimated, on the basis of statistics contained in an affidavit submitted by an employee of the Vermont Department of Employment Security, that the cost to Vermont in additional ANFC benefits could be as high as $1 million in fiscal year '75. Additionally, the federal share in Vermont could increase by approximately $2 million.

unemployment compensation would not. It is extremely unlikely that Congress intended to create such an irrational system.

CONCLUSION

It is the appellant's belief that the District Court has distorted the meaning of 42 U.S.C. §607(b)(2)(C)(ii) and §2333.1(3) of the Vermont Welfare Assistance Manual. While this interpretation allowed the Court to avoid a ruling on the constitutional issues, such avoidance should not be practiced for its own sake.[22] If Congress intended, as it clearly did, that the families of unemployed fathers should be barred from the receipt of AFDC benefits during the period that the father is eligible for unemployment compensation, then the statute and regulation should be given full force and effect, and the constitutional issues squarely faced.

The appellant is aware of course that the proper construction of the statute and regulation might create some inequities. Nevertheless, these inequities should not be overcome by subverting the will of Congress. If these inequities are constitutionally impermissible, then they should be overcome by a ruling to that effect. The Court's decision merely replaces an arguably questionable system with one clearly irrational.

Therefore, for the reasons expressed herein, the appellant contends that the questions presented by this appeal are sub-

[22] As Mr. Justice Brennan said recently in his dissenting opinion in *DeFunis* v. *Odegaard*, 42 U.S.L.W. 4578, 4589 (U.S. Apr. 23, 1974), "Although the court should, of course, avoid unnecessary decisions of constitutional questions, we should not transform principles of avoidance of constitutional decisions into devices for sidestepping resolution of difficult cases."

stantial and of great public importance. It is urged that probable jurisdiction be noted.

Respectfully submitted,

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APPENDIX A

JEAN GLODGETT ET AL., INTERVENORS,
v.
JOSEPH BETIT, INDIVIDUALLY AND AS COMMISSIONER OF THE VERMONT DEPARTMENT OF SOCIAL WELFARE; ELLIOTT RICHARDSON, INDIVIDUALLY AND AS SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE.
Civ. A. File No. 6550.
United States District Court,
D. Vermont
Oct. 23, 1973.
Supplemental Opinion Dec. 28, 1973.

OPINION

HOLDEN, District Judge.

The Vermont Department of Social Welfare denies payment under its "Aid to Needy Families with Children" (ANFC) program to families in which the father receives unemployment compensation.[1] During any week in which the father receives unemployment benefits, his family is held ineligible for any ANFC payments, even if the unemployment payment is less than the ANFC payment which the family otherwise would have received. Vermont must op-

[1] Vermont Welfare Regulation 2333.1 provides in part:

"An 'unemployed father' is one whose minor children are in need because he is out of work, is working part time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that:

* * * * *

3. He is not receiving Unemployment Compensation during the same *week* as assistance is granted."

erate its ANFC program in this manner in order for the ANFC-UF ("Aid to Needy Families with Children — Unemployed Father") segment of the program to receive federal financial assistance under the federal "Aid to Families with Dependent Children" (AFDC) program.[2]

The named plaintiffs, Glodgett, Percy and Derosia, are the parents and minor children of Vermont families who were denied ANFC assistance because of the receipt of unemployment compensation by the father in each of these families. On December 17, 1971, the Glodgett family's application for ANFC was accepted and they were allotted a monthly benefit of $239.00. On January 12, two days after Mr. Glodgett began receiving unemployment compensation from New Hampshire of $14.00 per week, he was notified by the state that his ANFC payments would be terminated as of February 16, 1972, by reason of his receiving unemployment compensation. The ANFC grant was reinstated soon after Mr. Glodgett ceased receiving unemployment benefits in March.

When Roger Percy's employment as a trucker was suspended, he began receiving unemployment benefits of $172.00 per month. Because of his receipt of unemployment compensation, his family was denied ANFC payments which would have totalled $410.00 per month, had the family not been disqualified.

[2] Although each state may refuse to participate in the federal welfare program, once a state decides to participate it must maintain a system consistent with the Social Security Act. *See Townsend* v. *Swank*, 404 U.S. 282, 285, 92 S.Ct. 502, 30 L.Ed.2d 448 (1971); *Rosado* v. *Wyman*, 397 U.S. 397, 419-420, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970); *King* v. *Smith*, 392 U.S. 309, 316-317, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968). If a state elects to provide ANFC benefits to families with unemployed fathers (ANFC-UF), 42 U.S.C. §607 (b) (2) (C) (ii) requires that the state plan must deny benefits under §607 during any week in which the father receives unemployment compensation. See text, *infra*.

On October 25, 1972, the Derosia family qualified for ANFC assistance in the amount of $394.00 per month. On November 6 Mrs. Derosia notified Social Welfare that the family was receiving unemployment compensation of $56.00 per month. For this reason the Derosias' ANFC grant was terminated as of December 1, 1972.

The plaintiffs seek injunctive and compensatory remedies on their own behalf and also on behalf of the class they claim to represent. More particularly, they seek the following relief: permission to maintain this action as a class action; a declaration that 42 U.S.C. §607 (b) (2) (C) (ii) and Vermont Welfare Regulation 2333.1 are unconstitutional because they respectively violate the Due Process Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment. They seek an order enjoining the enforcement of the statute and regulation against the plaintiff class and compensatory ANFC benefits paid retroactively to the plaintiffs and class in the same amount that they would have been paid under 42 U.S.C. §606,[3] or as if the mother, instead of the father, had been receiving unemployment compensation.[4] They further request an order directing the Secretary of HEW to approve the Vermont ANFC-UF program without requiring the inclusion of a provision disqualifying families with fathers receiving unemployment compensation; and such further relief as the court deems appropriate. At oral argument the plaintiffs advanced an additional statutory claim, contending that Vermont Wel-

[3] Section 606, through the definition of "dependent child", authorizes payments to families in which a child has been deprived of parental support by reason of the death, absence or incapacity of a parent. See text, *infra*.

[4] Section 607 (b) (2) (C) (ii) provides for the disqualification from ANFC-UF benefits of families in which the father receives unemployment payments, but does not disqualify families in which the mother receives unemployment benefits. See text, *infra*.

fare Regulation 2333.1 is enforced inconsistently with 42 U.S.C. §607(b)(2)(C)(ii).

A three-judge court was convened, as required by 28 U.S.C. §§2281, 2282, since injunctive relief is sought against state and federal enactments on constitutional grounds. The defendant Betit at the time the action was commenced was Commissioner of Social Welfare for the State of Vermont. The defendant Richardson was then Secretary of the Department of Health, Education and Welfare. All parties have moved for summary judgment. Both defendants have moved to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted.

Class Action Status

The named plaintiffs contend they are representative of a class of Vermont families deprived of ANFC because the father receives unemployment compensation. In their complaint they request certification of this suit as a class action.

While the defendants do not contest the class action status of this suit, before the action may so proceed the court is called upon to determine whether the action is maintainable as a class suit. Fed.R.Civ.P. Rule 23(c)(1);[5] *Jackson* v. *Cutter Laboratories*, 338 F.Supp. 882, 886 (E.D.Tenn. 1970). An action is not maintainable as a class action merely because it is so designated in the pleadings. *Cash* v. *Swifton Land Corporation*, 434 F.2d 569, 571 (6th Cir. 1970); *In re Swan-Finch Oil Corporation*, 279 F.Supp. 386, 391 (S.D.N.Y. 1967). To the contrary, the plaintiffs in a purported class action bear the burden of establishing that their action meets the prerequisites of Rule 23. *Rossin* v. *Southern*

[5] Rule 23(c)(1) provides:
(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained.

Union Gas Company, 472 F.2d 707, 712 (10th Cir. 1973); *Poindexter* v. *Teubert*, 462 F.2d 1096, 1097 (4th Cir. 1972); *Daye* v. *Commonwealth of Pennsylvania*, 344 F. Supp. 1337, 1342 (E.D.Pa. 1972); *Clark* v. *Thompson*, 206 F.Supp. 539, 542 (S.D. Miss.1962), *aff'd* 313 F.2d 637 (5th Cir. 1963), cert. denied, 375 U.S. 951, 84 S. Ct. 440, 11 L.Ed.2d 312 (1963); *Free World Foreign Cars, Inc.* v. *Alfa Romeo*, 55 F.R.D. 26, 29 (S.D.N.Y.1972); see *Demarco* v. *Edens*, 390 F.2d 836, 845 (2d Cir. 1968); *Phillips* v. *Sherman*, 197 F.Supp. 866, 869 (N.D.N.Y.1961). This burden imposes upon the plaintiffs in a purported class action the responsibility to move for formal certification of their class action by the court under Rule 23(c)(1). *Herbst* v. *Able*, 45 F.R.D. 451, 453 (S.D.N.Y.1968); *Zeigler* v. *Gibralter Life Insurance Company*, 43 F.R.D. 169, 170 (D.S.D.1967).

In this case, beyond their request for certification in their complaint, the plaintiffs have not sought a formal determination of class action status. Thus the vital issues concerning the adequacy of representation which underly [*sic*] any representative action remain unattended and unresolved. The question of adequacy of representation, see *Hansberry* v. *Lee*, 311 U.S. 32, 41-43, 61 S.Ct. 115, 85 L.Ed. 22 (1940); *Herbst* v. *Able*, *supra* at 453 of 45 F.R.D., has not been answered. Nor have important issues concerning notice: whether notice is required not only if the damages aspect of the action is to be maintained, see *Eisen* v. *Carlisle & Jacquelin*, 479 F.2d 1005, 1015 (2d Cir. 1973), but also if injunctive relief is sought on behalf of the class under Rule 23(b)(2), compare *Eisen* v. *Carlisle & Jacquelin*, 391 F.2d 555, 564-565 (2d Cir. 1968); *Schrader* v. *Selective Service System Local Board No. 76 of Wisconsin*, 470 F.2d 73, 75 (7th Cir. 1972); *Zachery* v. *Chase Manhattan Bank*, 52 F.R.D. 532, 535 (S.D.N.Y. 1971), with *Yaffee* v. *Powers*, 454 F.2d 1362, 1366 (1st Cir. 1971); *Johnson* v. *Georgia Highway*

Express, Inc., 417 F.2d 1122, 1125 (5th Cir. 1969); *Woodward* v. *Rogers*, 344 F. Supp. 974, 980 n. 10 (D.D.C. 1972); *Vaughns* v. *Board of Education of Prince George's County*, 355 F.Supp. 1034, 1035 (D.Md. 1972); *Northern Natural Gas Co.* v. *Grounds*, 292 F.Supp. 619, 636 (D.Kan. 1968); 3B Moore, Federal Practice, ¶23.72, pp. 1421-1422 (1969). And if prejudgment notice is required here, the mechanics involved, such as the form the notice should take, have not been dealt with by the parties. Compare *Eisen* v. *Carlisle & Jacquelin*, 479 F.2d 1005, 1015 (2d Cir. 1973), with *e.g.*, *Lopez* v. *Wyman*, 329 F.Supp. 483, 486 (W.D.N.Y. 1971); *Snyder* v. *Board of Trustees of the University of Illinois*, 286 F.Supp. 927 (N.D. Ill. 1968).

Despite the fact that these issues have not been attended to, the plaintiffs have pressed their motion for summary judgment. Without a determination of these issues, a representative action which seeks to affect the rights of absent parties may not proceed. See *Hansberry* v. *Lee, supra*; *Mullane* v. *Central Hanover Bank & Trust Company*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). In moving for summary judgment without having sought a formal certification of this action as a class action, the plaintiffs leave us no choice but to dismiss the class aspects of this suit, on the ground that the plaintiffs have failed to meet their burden to prove that the action meets the prerequisites of Rule 23.

Jurisdiction

Section 1343(3) of Title 28, United States Code, affords jurisdiction over plaintiffs' claims against both the state and the federal defendants *Aguayo* v. *Richardson*, 473 F.2d 1090, 1102 (2d Cir. 1973); *cf. Macias* v. *Finch*, 324 F.Supp. 1252 (N.D. Calif. 1970), (3-Judge Court), *aff'd sub nom, Macias* v. *Richardson*, 400 U.S. 913, 91 S.Ct. 180, 27 L.Ed.2d 153 (1970); *Conner* v. *Finch*, 314 F.Supp. 364 (N.D. Ill.

1970), (3-Judge Court), *aff'd sub nom, Conner* v. *Richardson*, 400 U.S. 1003, 91 S.Ct. 575, 27 L.Ed.2d 618 (1971); but see *Stinson* v. *Finch*, 317 F.Supp. 581 (D. Ga. 1970), (3-Judge Court). Section 1343(3) provides original jurisdiction in the United States District Court of actions seeking redress for deprivations of constitutional rights occurring under color of state law or regulation.[6]

The plaintiffs have been denied ANFC-UF benefits, arguably in violation of their constitutional rights, under color of Vermont Welfare Regulation 2333.1. There is plainly subject matter jurisdiction over this suit under 28 U.S.C. §1343(3), albeit that there is no specific assertion of jurisdiction on this statute.

As defendant Betit is responsible for enforcing the state regulation in question, he is responsible in part for the denial of benefits to the plaintiffs, so there is jurisdiction over the claim against him. There is also jurisdiction over the claim against the Secretary of HEW, since his enforcement of 42 U.S.C. §607(b)(2)(C)(ii) requires the defendant Betit to deny ANFC benefits to the plaintiffs. Thus he is partially responsible for the deprivation of which all the plaintiffs complain.[7]

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[6] 28 U.S.C. §1343(3) provides:
The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege, or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

[7] All that section 1343(3) requires for the exercise of jurisdiction is an alleged deprivation of Constitutional rights effected under color of state law or regulation. Given such a state action, which concededly occurred here, it is necessary to join as party defendants all persons responsible for that action. While the *Stinson* court felt that a Secretary of HEW could not properly be joined, because of his administration of

The failure of the plaintiffs to plead section 1343(3) as a basis for the court's authority over the claim against the Secretary is not a serious jurisdictional defect. While it is the duty of the court to take note of any defects of jurisdiction so that the mandate of the statutes which limit jurisdiction will be observed, *Arnold* v. *Troccoli*, 344 F.2d 842 (2d Cir. 1965), a statute conferring federal jurisdiction need not be specifically pleaded if facts giving the court jurisdiction are set forth in the complaint. *New York State Waterways Association, Inc.* v. *Diamond*, 469 F.2d 419, 421 (2d Cir. 1971); *Eidschun* v. *Pierce*, 335 F.Supp. 603, 615 (D.Iowa

a federal matching grant statute, as a party defendant to a civil rights action challenging the state statutory program receiving the matching funds, we do not agree.

First, the *Stinson* court took the view that 28 U.S.C. §1391(e) barred the exercise of personal jurisdiction over the Secretary by the court in the district where the claim arose, if a non-federal party were joined as a party defendant. The law in this circuit is to the contrary. *Liberation News Service* v. *Eastland*, 426 F.2d 1379, 1382 n. 5 (2d Cir. 1970).

Second, it is highly unrealistic to suppose that the threat by a federal official of a denial to a state or federal ANFC-UF matching funds, in retaliation for a refusal by the state to operate its ANFC-UF program in a certain way, does not make that official partially responsible for the manner in which the program is operated. The *Stinson* court's denial of this responsibility would sanction a federal statute which, arguably, authorizes the states to violate the Equal Protection Clause, contrary to the express prohibition against such Congressional action in *Shapiro* v. *Thompson*, 394 U.S. 618, 641, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

To the extent there is any doubt about the propriety of extending 1343(3) jurisdiction over the claim against the federal defendant here, the doubt should be resolved in favor of jurisdiction, to avoid the anomaly of denial of federal jurisdiction over a suit against a federal officer challenging the constitutionality of a federal statute involving social welfare, an area in which the federal courts have particular expertise. See Friendly, Federal Jurisdiction: a General View 69-70, 121-122; Wright, Law of Federal Courts 110; *Aguayo* v. *Richardson*, 473 F.2d 1090, 1102 (2d Cir. 1973).

1971); see also *Phillips* v. *Rockefeller*, 321 F.Supp. 516 (S.D.N.Y.1970), aff'd, 435 F.2d 976 (2d Cir. 1970). The motions of the defendants to dismiss for want of jurisdiction of the subject matter of this controversy must be denied.

The Statutory Scheme

Title IV (42 U.S.C. §601 *et seq.*) of the Social Security Act provides for a cooperative federal-state program to assist needy families with children. States are not required to establish such programs. If they do, they must submit their plan to the Secretary for approval. Every state has established such a program.[8] If the plan submitted meets the requirements of 42 U.S.C. §602(a) and contains none of the conditions prohibited in §602(b), then the Secretary "must approve" it. Upon approval, the state becomes entitled to receive substantial federal funding for payments made in accordance with the plan and applicable federal conditions. Vermont's plan has been approved by the Secretary.

As originally established by the Social Security Act of 1935, the program for aid to dependent children did not provide for the needs of children caused by the unemployment of a parent. *King* v. *Smith*, 392 U.S. 309, 327-330, 88 S.Ct. 2128, 20 L.Ed.2d 1118 (1968). In 1961 the Act was amended to allow states the option of extending coverage to children who were needy because of the unemployment of a breadwinning parent. The 1961 amendment provided that a state could, if it chose to do so, deny all or any part of an AFDC stipend to a family during any month in which

[8] *Dandridge* v. *Williams*, 397 U.S. 471, 472-473, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). For a general picture of AFDC as established by the Social Security Act, *see King* v. *Smith*, 392 U.S. 309 (1968); *Rosado* v. *Wyman*, 397 U.S. 397, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970); *Dandridge* v. *Williams*, *supra*.

the supporting parent received unemployment compensation.

In 1968 the section of the act relating to ANFC-UF was amended to include the provisions challenged here. Benefits became available to a family whose need was occasioned by the unemployment of a father, under standards prescribed by the Secretary; formerly, benefits accrued to a family whose need was caused by the unemployment of a parent, as defined by the state. The 1968 amendment also mandated denial of benefits to a family during any week in which the father received unemployment compensation. Formerly the Act allowed the state the option of enforcing a complete or partial denial of benefits, or a full stipend without reduction, for any month during which the parent received unemployment compensation.

Section 606(a), by definition of "dependent child," provides for assistance to families who are needy because of deprivation of parental support or care by reason of the death, continued absence or physical or mental incapacity of a parent. Section 607 enlarges this coverage to authorize benefits to children who are needy as a result of the unemployment of the father.

Section 607(b) makes this extended coverage applicable "to a State if the State's plan, approved under Section 602 of this title —

(2) provides —

(C) for the denial of aid to families with dependent children to any child or relation specified in subsection (a) of this section — (i) if, and for so long as, such child's father is not currently registered with the public employment office in the State, and

(ii) with respect to any week for which the child's father receives unemployment compensation under

an unemployment compensation law of a State or of the United States."

Vermont has elected to extend its ANFC program to include those who have been deprived of parental support or care by reason of the unemployment of the father under 42 U.S.C. §607. In response to the requirements of that section, it has promulgated Welfare Regulation 2333.1. This regulation renders the family of an unemployed father eligible for ANFC-UF benefits if the father "is not receiving Unemployment Compensation during the same *week* as assistance is granted." (Emphasis in original text.)

This is in contrast to the treatment afforded ANFC families who receive income in a form other than unemployment compensation received by the father. The receipt of such income does not render the family ineligible for ANFC; the amount of the receipt is simply deducted from the ANFC payment which the family would normally receive.[9]

[9] Under the Vermont plan, approved by the Secretary of HEW as consistent with the requirements of the Social Security Act, receipt of income does not render a family per se ineligible for ANFC. If the amounts received are insufficient to bring the family's income above the state-determined standard of need, those amounts are simply subtracted from the amount of the grant to which the family is entitled. Under Vermont Welfare Regulation 2601, the "Vermont ANFC payment level" is defined as the sum of the ANFC basic needs standard and shelter expense, minus "the budgeted income of the applicant and his legal dependents." "Budgeted income" is defined as "gross monthly income received from any source by the applicant and his legal dependents without income exclusions for any purpose." *Id.* "Unearned income" is explicitly defined to include "income from pension and benefit programs, such as Social Security, Railroad Retirement, veteran's pension or compensation, Unemployment Compensation, employer or individual private pension plans and/or annuities, etc." Vermont Welfare Regulation 2253.

For example, suppose a family is in need because of the father's illness and the father receives a veteran's pension. The family is not disqualified from receiving ANFC. If it is eligible for ANFC, it

The Statutory Claim

The plaintiffs rely on the language of §607 to assert the claim that an unemployed father can avoid disqualification from ANFC-UF benefits by refusing to accept unemployment compensation. In this they rightfully maintain that a family eligible for ANFC benefits under section 607 can be excluded only for each week in which unemployment compensation is actually received by the father. It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation. And in this construction the defendants concur. We find nothing in the legislative history of the enactment at variance with this construction.

Since actual payment of unemployment compensation is the controlling factor, rather than eligibility for such payment, the statute affords the unemployed father an option. There is no compulsion that he accept unemployment compensation. He may accept such payment and forego ANFC-UF benefits for himself and his family, or he may accept the benefits afforded by the ANFC-UF program at the cost of surrendering unemployment compensation. The option is to receive (a) ANFC without unemployment compensation, or (b) unemployment compensation without ANFC. We construe this option to operate as follows: If a father otherwise eligible for ANFC-UF receives unemployment

---

receives an ANFC payment equal to the state standard of need reduced by the amount of the veteran's benefit.

We use the term "state standard of need" to mean the amount of money that a family qualifying for ANFC is entitled to receive. The standard varies according to the number of persons in the group eligible for assistance, the number of persons in the household where the group resides, the place of residence of the group, and the form of housing involved, and includes funds to allow the recipient group to purchase the necessities of life: food, clothing, fuel, utilities, housing, etc. Vermont Welfare Regulation 2211.1-2211.2.

benefits which are less than the ANFC payment for which he qualifies, he can reject the unemployment check in favor of the ANFC payment, thereby receiving an income consistent with the state standard of need. If, on the other hand, he receives an unemployment check which is larger than his ANFC stipend would be, he can accept it, and thereby forego his right to ANFC for that week. In either event, the option available to him will provide total income equal to or greater than the state standard of need.

[6] This result provides the same relief the plaintiffs seek to achieve by way of their constitutional claims. In those claims the plaintiffs seek a judicial determination that families of unemployed fathers applying for AFDC should receive the same treatment as families in need for other reasons, who qualify for AFDC under §606. Their concern is that families of unemployed fathers, like other families applying for AFDC, should be assured of receiving an income equal to the state standard of need, irrespective of their eligibility to receive outside income. The option afforded by our construction of 42 U.S.C. §607(b)(2)(C)(ii) provides this protection. Since our construction of this statute resolves this case, we are precluded from reaching the plaintiffs' constitutional claims. *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 347, 56 S.Ct. 466, 80 L.Ed. 688 (1936), (Brandeis, J., concurring).

It is clear from the information before the court the extent to which the plaintiffs have been damaged financially by the failure of the Vermont Department of Social Welfare to afford them a choice between unemployment compensation and ANFC-UF. It appears from oral argument and from the stipulated facts filed by the parties that, to an extent which has not been made precisely clear, the State of Vermont supplemented the plaintiffs' unemployment compensation checks with funds from General Assistance, thereby

reducing the actual loss each plaintiff suffered when his family was disqualified from ANFC-UF. If the plaintiffs are able to make a showing that they have suffered pecuniary loss as a result of this disqualification, we consider it a proper exercise of our equitable powers to afford the plaintiffs the option of re-tendering their unemployment compensation benefits and receiving ANFC benefits in lieu thereof for the relevant weeks in which the receipt of unemployment compensation has adversely affected the financial interest of the family concerned.

The parties are directed to prepare a proposed decree for approval by the court in accordance with the views expressed in this opinion.

SUPPLEMENTAL OPINION AND ORDER

PER CURIAM.

Plaintiffs have filed a motion for rehearing on dismissal of the class action. Defendant Philbrook has filed a motion for a new trial.

Since the motion for a new trial presents nothing for consideration that was not presented to the court originally and is in essence a petition for rehearing, it is hereby denied.

While the motion for rehearing on dismissal of the class action may present viable matter, since the original decision of the court and motion here filed, the United States Court of Appeals for the Second Circuit has held in *Galvan* v. *Levine*, — F.2d —, —, — (2d Cir. 1973), that where the relief sought as to the class, as here, is prohibitory only, that is, seeks only declaratory or injunctive relief, and class action designation is therefore largely a formality, what is important is that the "*judgment* run to the benefit not only of the named plaintiffs but of all others similarly situated . . . ." *Id.* at —. We would assume that the State here would have understood the judgment to bind it in the future with respect to all claimants, in any event. Lest there be any mistake, however, in submitting a decree for our signature pursuant to the final paragraph of the opinion dated October 17, 1973, appropriate language to insure that the decree runs for the benefit of all others similarly situated in the future is hereby directed to be included. To the extent that plaintiffs' motion seeks to have retroactive reimbursement for unnamed parties, members of plaintiffs' class, in line with the actual relief given to the named plaintiffs and intervenors, class action designation is hereby refused, such a class action being unmanageable, notice being impracticable, and defendant being put to unwarranted inequitable administrative difficulty thereby.

APPENDIX B

United States District Court
District of Vermont

CIVIL ACTION NO. 6550

ROGER C. DEROSIA AND ARLENE M. DEROSIA, LARRY, HAROLD, ARTHUR, MARY AND BRIAN DESORIA, MINORS, BY THEIR MOTHER AND NEXT FRIEND, ARLENE M. DEROSIA: ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED;
JEAN GLODGETT AND DEANNA GLODGETT, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILD, TINA GLODGETT;
ROGER PERCY, SR. AND ROSAMOND PERCY, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILDREN, SHARON, SHEILA, ROGER, MARY, MATTHEW AND CHARON PERCY, AND ALL OTHERS SIMILARLY SITUATED

v.

PAUL R. PHILBROOK, INDIVIDUALLY AND AS COMMISSIONER OF THE VERMONT DEPARTMENT OF SOCIAL WELFARE;
CASPER W. WEINBERGER, INDIVIDUALLY AND AS SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

ORDER OF JUDGMENT

Upon the basis of the evidence, the arguments of counsel, and the opinions of this court dated October 17, 1973, and December 28, 1973, it is ordered, adjudged and decreed that:

(1) 42 U.S.C. §607(b)(2)(C)(ii), 45 CRF §233.100(a)(5)(ii) and Vermont Welfare Regulation 2331.1 [*sic*] excludes families in which the father is unemployed from benefits only for those weeks in which the father actually receives state unemployment compensation. The disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation, and there is no compulsion to accept UCC. If the father receives UCC benefits which are less than the ANFC payment for which he qualifies, he is afforded, under the statute, an option and can reject the UCC check in favor of the ANFC payment, thereby receiving an income consistent with the state standard of need.

(2) The Department of Social Welfare shall advise applicants who have been certified as eligible for ANFC-UF that they may elect to reject their UCC payments in favor of the ANFC payment for which they are otherwise qualified.

(3) The Secretary of HEW shall approve the Vermont ANFC-UF program in accordance with the interpretation given Section 607(b)(2)(c)(ii).

(4) This order shall bind the defendants from the date of judgment with respect to all others similarly situated as the plaintiff.

(5) Plaintiffs Glodgett, Percy and Derosia shall be given the option of retendering their unemployment compensation benefits and receiving ANFC benefits in lieu thereof, less any General Assistance paid, for the relevant weeks in which the receipt of unemployment compensation has adversely affected the financial interest of the family concerned.

Upon stipulation by the parties, if the above-mentioned named plaintiffs elect to retender their UCC and GA grants, payments, taking into account those grants, would be made as follows: $207.17 to the Glodgetts, $342 to the Percys, and $21.20 to the Derosias.

DATED at Burlington in the District of Vermont, this 20th day of February, 1974.

SO ORDERED.

/s/ James L. Oakes,
U.S. Circuit Judge

/s/ James S. Holden,
U. S. District Judge

/s/ Albert Coffrin,
U. S. District Judge

APPENDIX C

United States District Court
District of Vermont

CIVIL ACTION NO. 6550

PAUL R. PHILBROOK, INDIVIDUALLY AND AS COMMISSIONER OF THE VERMONT DEPARTMENT OF SOCIAL WELFARE; CASPER W. WEINBERGER, INDIVIDUALLY AND AS SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Appellants

v.

ROGER C. DEROSIA AND ARLENE M. DEROSIA, LARRY, HAROLD, ARTHUR, MARY AND BRIAN DESORIA, MINORS, BY THEIR MOTHER AND NEXT FRIEND, ARLENE M. DEROSIA, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED; JEAN GLODGETT AND DEANNA GLODGETT, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILD, TINA GLODGETT; ROGER PERCY, SR. AND ROSAMOND PERCY, INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILDREN, SHARON, SHEILA, ROGER, MARY, MATTHEW AND CHARON PERCY, AND ALL OTHERS SIMILARLY SITUATED.

Appellees

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Paul R. Philbrook, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of a Three Judge District Court entered in this action on February 21, 1974.

This appeal is taken pursuant to 28 USC §1253.

Dated: April 8, 1974

/s/ DAVID L. KALIB,
Assistant Attorney General
Office of the
Attorney General
Montpelier, Vermont 05602
(802) 828-3445
Attorney for Appellant
Paul R. Philbrook

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States upon Richard Kohn, Esq., attorney for the appellees, by posting a copy of same in United States mail receptacle, first class mail, addressed to his last known office address, 26 State Street, Montpelier, Vermont, on this 8th day of April, 1974.

/s/ DAVID L. KALIB,
Assistant Attorney General

APPENDIX D

UNITED STATES CODE

42 U.S.C. §607. Dependent children of unemployed fathers; definition

(a) The term "dependent child" shall, notwithstanding section 606(a) of this title, include a needy child who meets the requirements of section 606(a) (2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606(a) (1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

(b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title —

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when —

(A) such child's father has not been employed (as determined in accordance with standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

(B) such father has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

(C) (i) such father has 6 or more quarters of work (as defined in subsection (d) (1) of this sec-

tion) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under and unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d) (3) of this section) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) provides —

(A) for such assurances as will satisfy the Secretary that fathers of dependent children as defined in subsection (a) of this section will be certified to the Secretary of Labor as provided in section 602(a) (19) of this title within thirty days after receipt of aid with respect to such children;

(B) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained; and

(C) for the denial of aid to families with dependend children to any child or relative specified in subsection (a) of this section —

(i) if, and for so long as, such child's father is not currently registered with the public employment offices in the State, and

(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

(c) Notwithstanding any other provisions of this section, expenditures pursuant to this section shall be excluded from aid to families with dependent children (A) where such expenditures are made under the plan with respect to any dependent child as defined in subsection (a) of this section, (i) for any part of the 30-day period referred to in subparagraph (A) of subsection (b) (1) of this section, or (ii) for any period prior to the time when the father satisfies subparagraph (B) of such subsection, and (B) if, and for as long as, no action is taken (after the 30-day period referred to in subparagraph (A) of subsection (b) (2) of this section), under the program therein specified to certify such father to the Secretary of Labor pursuant to section 602(a) (19) of this title.

(d) For purposes of this section —

(1) the term "quarter of work" with respect to any individual means a calendar quarter in which such individual received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 413(a) (2) of this title), or in which such individual participated in a community work and training program under section 609 of this title or any other work and training program subject to the limitations in section 609 of this title, or the work incentive program established under part C;

(2) the term "calendar quarter" means a period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31; and

(3) an individual shall be deemed qualified for unemployment compensation under the State's unemployment compensation law if —

(A) he would have been eligible to receive such unemployment compensation upon filing application, or

(B) he performed work not covered under such law and such work, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such unemployment compensation upon filing application.

APPENDIX E

Vermont Welfare Assistance Manual

2333.1 Unemployed Father

An "unemployed father" is one whose minor children are in need because he is out of work, is working part-time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that:

1. He has not refused, without good cause, within this 30 day period a bona fide offer of employment or training for employment, and is currently registered with the State employment service.
2. He has 6 or more quarters of work in any 13 calendar quarter period ending within one year prior to application for assistance, or received or was qualified to receive Unemployment Compensation within one year prior to application for assistance.
3. He is not receiving Unemployment Compensation during the same *week* as assistance is granted.
4. If employed, he is employed less than 100 hours per month: or exceeds that standard for the month of application if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100 hour standard for the two months prior to application and is expected to be under the standard during the next month.

Full-time employment, although earnings may be insufficient to meet family need, is not considered "unemployment." Income from fewer than four boarders is not considered "employment."

When an applicant father states that his physical or mental health prevents him from obtaining gainful employment, eligibility shall be established on the basis of a medical determination of incapacity rather than unemployment.

Supreme Court, U. S.
FILED
DEC 20 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1974

No. 73-1820

PAUL PHILBROOK,
Appellant

—v.—

JEAN GLODGETT, ET AL.

No. 74-132

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Appellant

—v.—

JEAN GLODGETT, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

NO. 73-1820 DOCKETED JUNE 3, 1974, AND PROBABLE JURISDICTION NOTED OCTOBER 29, 1974.

NO. 74-132 DOCKETED AUGUST 17, 1974, AND FURTHER CONSIDERATION OF JURISDICTION POSTPONED OCTOBER 29, 1974.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820

PAUL PHILBROOK,

Appellant

—v.—

JEAN GLODGETT, ET AL.

No. 74-132

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Appellant

—v.—

JEAN GLODGETT, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

Civil Action No. 6550

DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1972	
Mar. 6	Filed Complaint.
Mar. 6	Issued Summons and delivered same to Marshal for service.
Mar. 8	Filed Summons returned served.
Mar. 29	Filed Stipulation for a 20 day extension of time for Defendant Joseph Betit during which he is required to file an Answer of Plaintiffs' Complaint. Mailed copy to attorneys.
Apr. 17	Filed Answer to Defendant Betit and Certificate of Service.
May 10	Filed Stipulation re Answer and Approval thereon.
June 15	Filed Answer of Defendant Elliot Richardson and Certificate of Service.
July 11	At the Call of the Calendar before Judge Coffrin, it was Ordered that this case be passed.
Aug. 16	Filed Motion for Judgment on the Pleadings, Motion for Summary Judgment, Motion to Dismiss for lack of Judgment and Memorandum of Law in support of Motions of Defendant Richardson and Certificate of Service.
Aug. 30	Filed Plaintiffs' Interrogatories to Defendant.

DATE	FILINGS—PROCEEDINGS
1972	
Sept. 8	In Chambers before Judge Coffrin, hearing on allegations in Defendant Betit's Answer; and on Class Action treatment and Propriety of 3-Judge Court. Richard S. Kohn, Esq., for Plaintiffs. David E. Wilson, Ass't. Attorney General for Defendant Joseph Betit and Norman Cohen, Ass't. U.S. Attorney for Government.
Sept. 8	Statements made to Court by all attorneys.
Sept. 8	Court makes inquiries of all attorneys.
Sept. 8	Parties to submit memorandums.
Sept. 20	Filed Plaintiffs' Memorandum of Law.
Oct. 23	Filed Defendant Betit's Memorandum of Law.
Nov. 15	Filed Plaintiffs' Memorandum concerning average monthly payments under AFDC-UF and unemployment insurance.
Dec. 11	Filed Motion of Roger C. and Arlene M. Derosia and Larry, Harold, Arthur, Mary and Brian Derosia to Intervene.
1973	
Feb. 8	Filed Designation of 3-Judge Court.
Feb. 24	Filed Stipulation re agreed facts.
Mar. 2	Filed Defendant's answer to interrogatories.
Mar. 5	In Court before Judge Oakes, Holden and Coffrin. Richard S. Kohn, Esq., and Nancy Kaufman, Esq., for Plaintiffs. Benson Scotch, Esq., for Defendant Commissioner of the Vermont Department of Social Welfare. William Gray and Carter LaPrade, Ass't. U.S. Attorneys for Defendant Elliot Richardson, individually, etc.

DATE	FILINGS—PROCEEDINGS
1973	
Mar. 5	Hearing on Government's Motion for Judgment on the pleadings; Motion for Summary Judgment; Motion to Dismiss for lack of Jurisdiction.
Mar. 5	Statements made to Court by Mr. LaPrade in support of said Motions; followed by Mr. Scotch for State of Vermont.
Mar. 5	Statements in opposition to said Motions made by Mr. Kohn for plaintiffs.
Mar. 5	Further statements made to Court by Mr. LaPrade in rebuttal to statements made by Mr. Kohn; followed by Mr. Scotch for State of Vermont.
Mar. 5	ORDERED: Plaintiffs have until March 15, 1973, to file memorandum; and Defendants have until March 25, 1973, to file reply memorandum.
Mar. 5	Hearing on Motion of Roger C. and Arlene M. Derosia and Larry, Harold, Arthur, Mary and Brian Derosia to intervene.
Mar. 5	No one objecting thereto, it is ORDERED: Motion to Intervene granted.
Mar. 5	Filed Complaint of Intervenors.
Mar. 16	Filed Plaintiffs' Motion for Leave to File Amended Complaint.
Mar. 16	Filed Plaintiffs' Memorandum of Law.
Mar. 27	Filed Government's Memorandum of Law.
Apr. 10	Filed Government's Memorandum of Law.
Apr. 18	Filed Memorandum of Law Concerning Jurisdiction (Pltfs.').
Apr. 20	Filed Order granting amended Complaint of pltf. intervenors. Mailed copy.
May 4	Filed Government's memorandum of law.

DATE	FILINGS--PROCEEDINGS
1973	
May 23	Filed Pltfs' Memorandum of Law.
Oct. 3	Filed motion of Robert and Tianna Spicer and Samantha and Stephanie Perry to intervene.
Oct. 23	Filed Opinion of Three-Judge Court. Mailed copy to Attys.
Nov. 6	Filed plaintiffs' motion for rehearing on dismissal of the class action.
Nov. 6	Filed memorandum of law in support of plaintiffs' motion for rehearing on dismissal of the class action.
Dec. 17	Filed Defendant's motion for new trial.
1974	
Jan. 8	Filed Supplemental Opinion and Order, Motion for new trial denied—in submitting a decree, appropriate language to insure that the decree runs for the benefit of all others similarly situated in the future is hereby directed to be included—Class action designation is refused. Mailed copy to Attys.
Jan. 18	Filed Motion to Intervene and for Temporary Relief of Tina, William and Sean Sarazin.
Jan. 18	Filed Affidavit of William Sarazin.
Jan. 18	Filed Memorandum of Law of William and Mary Sarazin.
Jan. 23	In open Court before Judge Holdren. Mary Skinner, Esq., for Intervenors. David L. Kalib, Ass't. Attorney General for Defendant Betit, William Gray, Ass't. U.S. Attorney for Defendant Elliot Richardson.
Jan. 23	Hearing on Plaintiffs' Motion to Intervene and for Temporary Relief.

DATE	FILINGS—PROCEEDINGS
1974	
Jan. 23	Statements made to Court by Mrs. Skinner in support of her motion and for temporary relief, objected to by Mr. Kalib.
Jan. 23	Statements made to Court by Mr. Gray who states they could probably get an order as early as next week and the issue at stake could be decided.
Jan. 23	Further statements made to Court by Mr. Kalib followed by Mrs. Skinner.
Jan. 23	ORDERED: that the Petition to Intervene will be granted.
Jan. 23	Filed Plaintiffs' Amended Complaint of Intervention.
Jan. 24	Issued Summons re Intervenors.
Jan. 25	Filed Stipulation.
Jan. 25	Filed Order—The intervention of Mary and William Sarazin is allowed—Defts. restrained from refusing to grant Pltff. ANFC-UF as of 1/28/74 for so long as Pltff remains eligible and foregoes receipt of Vermont unemployment compensation benefits. Copy mailed to attys.
Jan. 28	Filed Summons returned served as to Defts. Paul R. Philbrook, etc. and Caspar W. Weinberger, etc.
Feb. 12	Filed Transcript of Hearing on March 5, 1973 before Three-Judge Panel.
Feb. 20	Filed Order of Judgment of Three Judge Court. Copy mailed to attorneys.
Feb. 26	Filed Defendants' Motion to Stay, including Supersedeas in District Court and Memorandum in support of Motion.

DATE	FILINGS—PROCEEDINGS
1974	
Mar. 1	Filed Plaintiffs' memorandum of law in opposition to Defendants' motion to stay enforcement of the judgment.
Mar. 1	In open Court, hearing on Defendants' motion to stay. Richard Kohn, Esq. for Plaintiffs; David L. Kalib, Esq. for State; William Gray, Esq. for Government.
Mar. 1	Statements made to Court by Mr. Kalib, followed by Mr. Gray who joins in motion to stay.
Mar. 1	Statements made by Mr. Kohn.
Mar. 1	Ordered: Motion denied as to individual plaintiffs; motion granted as to class plaintiffs.—Parties to submit written Order for Court's approval by March 6, 1974.
Mar. 15	Filed Stay of Judgment. Copy mailed to attorneys.
Apr. 9	Filed Deft. Philbrook's Notice of Appeal to Supreme Court of the U.S. Mailed copy to Richard S. Kohn, Richard A. Axelrod, Esq. & Nancy F. Kaufman, Esq.; Kathleen M. Mitchell, Esq.; David L. Kalib, Esq.; U.S. Attorney; Court Reporter; Judge Oakes, Holden & Coffrin; and Clerk, Supreme Court, Washington, D.C.
Apr. 19	Filed Government's (for Caspar W. Weinberger etc.) Notice of Appeal to Supreme Court of the U.S. Mailed copy to Richard S. Kohn, Esq.; Richard A. Axelrod, Esq.; & Nancy E. Kaufman, Esq.; Kathleen M. Mitchell, Esq.; David L. Kalib, Esq.; U.S. Atty.; Court Reporter; Judge Oakes, Holden & Coffrin; and Clerk, Supreme Court, Washington, D.C.
June 17	Mailed Record on Appeal to Clerk, Supreme Court of the U.S., Washington, D.C. Notified attys.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Civil Action No. 6550

[Filed March 6, 1972]

JEAN GLODGETT and DEANNA GLODGETT, individually and on behalf of their minor child, TINA GLODGETT

ROGER PERCY, SR. and ROSAMOND PERCY, individually and on behalf of their minor children, SHARON, SHEILA, ROGER, MARY, MATTHEW and CHARON PERCY, and all others similarly situated

vs.

JOSEPH BETIT, individually and as Commissioner of the Vermont Department of Social Welfare; ELLIOTT RICHARDSON, individually and as Secretary of the Department of Health, Education and Welfare, DEFENDANTS

I. COMPLAINT

This is a suit for a declaratory judgment that 42 U.S.C. § 607 and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments to the United States Constitution insofar as they render children of unemployed fathers ineligible to receive ANFC benefits during any week that the father is receiving unemployment compensation under state unemployment compensation law. The action against the Commissioner of Social Welfare is based on 42 U.S.C. § 1983. Plaintiffs also seek damages and injunctive relief against the Commissioner of the Vermont Department of Social Welfare and relief in the nature of mandamus as against the Secretary of the Department of Health, Education and Welfare.

II. JURISDICTION

A. Jurisdiction against the Commissioner of the Vermont Department of Social Welfare is invoked pursuant to 28 U.S.C. § 1343(3)-(4) because it is brought to redress the deprivation under color of state law of a right secured by the fourteenth amendment, and by 28 U.S.C. § 1331 because it arises under the Constitution and the amount in controversy exceeds $10,000.

B. Jurisdiction against the defendant Secretary of the Department of Health, Education and Welfare is imparted by 28 U.S.C. § 1361 and 28 U.S.C. § 1331 because plaintiffs request relief in the nature of mandamus and the amount in controversy exceeds $10,000.

III. PARTIES

A. Plaintiffs Jean Glodgett and Deanne Glodgett are citizens of the United States and the State of Vermont and residents of Orleans, Vermont. Plaintiff Tina Glodgett sues by her parents and next friends.

B. Plaintiffs Roger and Rosamond Percy are citizens of the United States and the State of Vermont and residents of Orleans, Vermont. Plaintiffs Sheila, Sharon, Roger, Mary, Matthew and Charon Percy are minor children and sue by their parents and next friends.

C. Defendant Richardson is the Secretary of the United States Department of Health, Education and Welfare. Pursuant to 42 U.S.C. § 602(b), he is authorized to approve state plans for the implementation of ANFC.

D. Defendant Betit is Commissioner of the Vermont Department of Social Welfare. Pursuant to 33 V.S.A. § 2505, he is the chief administrator and executive officer. Through his agents, the plaintiffs and the class they represent have been denied ANFC benefits.

E. On December 16, 1971, Mr. Glodgett applied for ANFC and was accepted. On December 20, 1971, the family received its first check in the amount of $93.00. Thereafter, they began receiving the full monthly benefit of $239.00. On January 10, 1972, Mr. Glodgett began receiving unemployment compensation from New Hampshire in the amount of $14.00 per week. He has been notified by letter dated January 12, 1972, by the Vermont Department of Social Welfare that his ANFC benefits will be terminated beginning February 16, 1972 because he is receiving unemployment compensation.

F. Plaintiff Roger Percy was employed as a trucker by Orlando Construction Company until December 4, 1971, when he was laid off. He applied for ANFC-UF on December 6, 1971. On December 10, 1971, he began drawing unemployment compensation in the amount of $43.00 per week. His ANFC application was denied on December 20, 1971 for the sole reason that he was receiving unemployment compensation. If he was eligible for ANFC he would draw $410 per month for his family. His monthly unemployment is approximately $172.00. To help him meet expenses, he has had to rely on General Assistance.

IV. STATEMENT OF CLAIM

1. The Social Security Act (42 U.S.C. §§ 606 and 607) provides for assistance to needy families with dependent children if the children have been deprived of parental support or care due to death, abandonment, physical or mental incapacity or unemployment of a parent.

2. Section 607(b)(2)(c)(ii) of the Social Security Act provides that assistance under the aid to families with dependent children program for unemployed parents cannot be granted if the father is eligible for or receiving unemployment compensation. Aid must be denied for any week in which the father receives unemployment compensation regardless of the amount and of the unmet need of the family. Section 2331.31(3) of the Vermont Welfare Manual implements this requirement for Vermont.

The needs of the plaintiffs for a minimum subsistence compatible with health and decency are computed by the Department of Social Welfare and appear in the Vermont Welfare Manual at Section 2211.2. The amount received by the plaintiffs under the unemployment compensation program is considerably less than the amounts the De-

partment has adopted as the minimum necessary for a decent and healthful subsistence.

42 U.S.C. § 607(b)(2)(c)(ii) and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments for the following reasons:

A. Section 607 creates two classes of children whose fathers are unemployed, those who are eligible for state unemployment compensation and those who are not. Needy children are excluded solely because their fathers receive or are eligible to receive unemployment compensation benefits even though such benefits may be far below what would otherwise be received under public assistance. Plaintiffs would be eligible for assistance if they were receiving amounts equal to their unemployment benefits in any other form of income or benefits. Having eligibility turn on the source of the income rather than the amount constitutes an invidious discrimination against the former group of children.

B. 42 U.S.C. § 607(b)(2)(c)(ii) is unconstitutional because it only disqualifies those children whose *fathers* are eligible for unemployment. If both parents are in the home and the mother is receiving unemployment, the family is eligible for ANFC-UF. This is an arbitrary distinction conditioned solely on which parent is receiving unemployment.

C. 42 U.S.C. § 606 provides ANFC eligibility for children who are deprived of parental support or care due to continued absence of one parent from the home. Eligibility under section 606 does not depend upon whether the parent in the home is receiving unemployment or not. Thus, the same children who are ineligible under section 607 because the father is receiving unemployment would be eligible for ANFC under section 606 if either parent deserted the family. The statutory scheme which penalizes children because their parents are not separated is arbitrary and invalid under the fifth and fourteenth amendments.

Subparagraphs A, B and C above are equally applicable to Vermont Welfare Regulation 2331.31(3).

V. CLASS ACTION

Plaintiffs represent the class of those families residing in the State of Vermont who are eligible for the ANFC-UF program but for their fathers' receipt of or eligibility for unemployment compensation and as a result of this exclusion from ANFC are receiving assistance insufficient to meet their needs. Plaintiffs sue on behalf of themselves and all others similarly situated, pursuant to Rule 23, F.R.C.P.:

(a) The members of this class are so numerous that joinder of them all is impracticable.

(b) There are questions of law and fact common to all members of the class, and the common questions of law and fact predominate over any questions effecting only individual members of the class.

(c) The claims of the representative plaintiffs will fairly and adequately protect the interests of the class.

(d) Defendants have acted or refused to act on grounds generally applicable to the class.

(e) An adjudication of the rights of the named representatives of the class would, as a practical matter, be dispositive of the interests of all other members.

VI. THREE JUDGE COURT

The Plaintiffs request that this action be heard by a three judge district court pursuant to 28 U.S.C. §§ 2281 and 2282 because plaintiffs seek a permanent injunction against the enforcement of an act of Congress and the regulations of statewide applicability on the ground that they are repugnant to the Constitution.

VII. PRAYER FOR RELIEF

Wherefore, the plaintiffs respectfully pray that:

1. This court assume jurisdiction of this cause and convene a three judge court pursuant to Title 28, U.S.C. §§ 2281, 2282 and 2284;

2. This court issue an order declaring that this is an appropriate class action and granting plaintiffs leave to proceed with this action as a class action;

3. The court declare 42 U.S.C. § 607(b)(2)(c)(ii) in violation of the due process clause of the fifth amendment and enjoin its enforcement as to plaintiffs and the class they represent;

4. The court declare Vermont Welfare Regulation 2331.31(3) in violation of the equal protection clause of the fourteenth amendment and enjoin its enforcement as to the plaintiffs and the class they represent;

5. That the Vermont Commissioner of Social Welfare be enjoined to pay retroactive benefits to the plaintiffs and the class they represent in the same amount that they would have been paid under 42 U.S.C. § 606 or as if the mother, instead of the father, had been receiving unemployment compensation;

6. That a writ in the nature of mandamus issue against the secretary of the Department of Health, Education and Welfare ordering him to approved the Vermont ANFC-UF plan without requiring it to contain a provision based on 42 U.S.C. § 607(b)(2)(c)(ii);

7. Grant such further relief as the court may deed just and appropriate.

JEAN GLODGETT, DEANNA GLODGETT &
TINA GLODGETT

ROGER PERCY, SR., ROSAMOND PERCY,
SHARON, SHEILA, ROGER, MARY,
MATTHEW & CHARON PERCY

By /s/ Richard S. Kohn
Richard S. Kohn
Douglas L. Molde
Richard A. Axelrod
Vermont Legal Aid, Inc.
Attorneys for Plaintiffs

U.S. DISTRICT COURT
DISTRICT OF VERMONT

[Filed April 17, 1972]

[Title Omitted in Printing]

ANSWER OF DEFENDANT BETIT

The defendant Betit answers the complaint of the plaintiffs as follows:

I

1) Defendant Betit denies all of the allegations under the subjects of JURISDICTION and THREE-JUDGE COURT.

2) With regard to parts A and B under the subject of PARTIES, defendant Betit admits that the named plaintiffs are citizens of the United States and of the State of Vermont, but is without knowledge and information sufficient to form a belief as to the truth of this allegation with regard to any alleged parties other than the named plaintiffs, and, therefore, denies the allegation to the extent that it may seek to encompass unnamed parties.

3) With regard to parts C and D under the subject PARTIES, the defendant Betit admits the allegations thereunder, but specifically alleges that any denial of ANFC benefits by him was consistent with State and Federal law as set forth in § 2331.31(3) of the Vermont Welfare Assistance Manual and 42 U.S.C. § 607(b)(2)(ii), respectively.

4) With regard to parts E and F under the subject of PARTIES, defendant Betit admits that the named plaintiffs have been receiving unemployment compensations from the State of New Hampshire in the case of plaintiffs Glodgett and from the State of Vermont in the case of plaintiffs Percy during a period of time herein, but does not admit that they have received unemployment compensation for any specific period of time that the complaint might consider. The defendant Betit

alleges that he is without knowledge and information sufficient to form a belief as to the truth of this allegation with regard to any alleged parties other than the named plaintiffs, and, therefore, denies the allegation to this extent.

Defendant Betit further admits that plaintiffs Glodgett were notified by letter that their ANFC benefits were to be terminated on February 16, 1972 due to the fact that said plaintiffs were receiving unemployment compensation, and that plaintiffs Percy were denied their application for ANFC benefits on or about December 20, 1971, for the reason that said plaintiffs were then receiving unemployment compensation. Defendant Betit alleges, however, that said denials by him were consistent with State and Federal laws as set forth in § 2331.31 (3) of the Vermont Welfare Assistance Manual and 42 U.S.C. § 607(b)(2)(ii), respectively.

5) Under the subject STATEMENT OF CLAIM, the defendant Betit answers as follows:

a) Admits the allegations of Part I.

b) As to Part 2, defendant Betit admits that § 607 (b)(2)(c)(ii) of the Social Security Act provides that ANFC payments may not be made to an otherwise eligible family if the father is eligible for or receiving unemployment compensation, and that § 2331.31(3) of the Vermont Welfare Assistance Manual implements the said Federal section. Defendant Betit further admits that § 2211.2 of the Vermont Welfare Assistance Manual sets forth the basic living requirements for persons eligible for assistance in the ANFC Program, but denies that this would apply to the named plaintiffs, since they do not meet the eligibility requirements for this program. The defendant Betit alleges that he is without sufficient knowledge and information to form a belief as to the truth of the allegation that plaintiffs (named or unnamed) receive "considerably less" from unemployment compensation than the amounts reflected in the aforesaid standards.

c) The defendant Betit denies all the remaining allegations under STATEMENT OF CLAIM.

6) Defendant Betit denies all of the allegations under the subject of "Class action."

II

FIRST AFFIRMATIVE DEFENSE

The plaintiffs' complaint fails to state a claim for which relief can be granted.

III

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the defendants and the subject matter.

IV

THIRD AFFIRMATIVE DEFENSE

That the plaintiffs have an adequate remedy at law and that they have failed to exhaust their administrative remedies and their right of judicial review in State Courts.

V

FOURTH AFFIRMATIVE DEFENSE

The regulations of the Vermont Department of Social Welfare and the purported acts of which plaintiffs complain are based upon Section 407(b)(2)(c)(ii) of the Social Security Act and the requirements imposed by the U.S. Department of Health, Education and Welfare and there is no liability or responsibility on the defendant Betit, individually or as the Commissioner of the Vermont Department of Social Welfare.

VI

FIFTH AFFIRMATIVE DEFENSE

That in view of the Fourth Affirmative Defense, that the defendant Betit should be dropped as a party defendant.

WHEREFORE the defendant Betit, prays that the plaintiff take nothing by this complaint and this action be dismissed with prejudice.

Dated this 17th day of April, 1972.

Respectfully submitted,

JAMES N. JEFFORDS
Attorney General
State of Vermont
Montpelier, Vermont 05602

By: /s/ David E. Wilson
DAVID E. WILSON, ESQ.
Assistant Attorney General
c/o Department of Social Welfare
8 East State Street
Montpelier, Vermont 05602

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed June 15, 1972]

[Title Omitted in Printing]

ANSWER OF DEFENDANT
ELLIOT RICHARDSON

Now comes the United States of America (Elliot Richardson, individually and as Secretary of the Department of Health, Education and Welfare), by its attorney, George W. F. Cook, United States Attorney for the District of Vermont, and submits the following for its answer to this complaint:

I. This paragraph sets forth conclusions of law and not allegations of fact, but insofar as an answer may be required, defendant respectfully denies each and every allegation of fact and conclusion of law that may be contained therein.

II. This paragraph sets forth conclusions of law and not allegations of fact, but insofar as an answer may be required defendant respectfully denies each and every allegation of fact and conclusion of law that may be contained therein.

III.

A. and B. Defendant Richardson does not presently possess sufficient information and knowledge to determine the truth of the allegations contained in these paragraphs.

C. The allegations of this paragraph are admitted.

D. Defendant Richardson does not presently possess sufficient information and knowledge to determine the truth of the allegations contained in this paragraph, EXCEPT that he admits the allegations contained in the first two sentences of this paragraph.

E. and F. Defendant Richardson does not presently possess sufficient information to determine the truth of the allegations contained in these paragraphs.

IV, V and VI. These paragraphs contain conclusions of law and not allegations of fact, but insofar as an answer may be required defendant respectfully denies each and every allegation of fact or conclusion of law contained therein.

VII. All allegations not expressly hereinbefore admitted, denied or modified are denied.

VIII. Defendant respectfully submits the following by way of affirmative defense:

1. This Honorable Court lacks jurisdiction over the subject matter of this action.

2. The complaint fails to state a claim upon which relief may be granted.

3. This suit should be dismissed for lack of proper venue.

Dated at Rutland, District of Vermont, this 15th day of June, 1972.

UNITED STATES OF AMERICA

George W. F. Cook
United States Attorney

By /s/ Norman Cohen
NORMAN COHEN
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

[Filed August 16, 1972]

[Title Omitted in Printing]

MOTIONS OF SECRETARY OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

I. MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant Elliot Richardson, Secretary of the Department of Health, Education and Welfare, by and through his attorney, George W. F. Cook, United States Attorney for the District of Vermont, pursuant to Rule 12(c), Federal Rules of Civil Procedure, respectfully moves this Honorable Court to grant to said defendant a judgment on the pleadings, as Plaintiffs fail to state a claim upon which relief may be granted.

WHEREFORE, defendant respectfully requests this Honorable Court grant this Motion for Judgment on the Pleadings.

Dated at Rutland, District of Vermont, this 11th day of August, 1972.

GEORGE W. F. COOK
United States Attorney

By /s/ Norman Cohen
NORMAN COHEN
Assistant U.S. Attorney

II. MOTION FOR SUMMARY JUDGMENT

Defendant Elliot Richardson, Secretary of Health, Education and Welfare, by and through his attorney, George W. F. Cook, United States Attorney for the District of Vermont, pursuant to Rule 56(b), Federal Rules of Civil Procedure, respectfully moves this Honorable Court to grant to this defendant a Summary Judgment, as there is no dispute as to any material fact and defendant is entitled to judgment as a matter of law.

WHEREFORE, defendant respectfully prays this Honorable Court grant this Motion for a Summary Judgment.

Dated at Rutland, District of Vermont, this 11th day of August, 1972.

GEORGE W. F. COOK
United States Attorney

By /s/ Norman Cohen
NORMAN COHEN
Assistant U.S. Attorney

III. MOTION TO DISMISS FOR LACK OF JUDGMENT

Defendant Elliot Richardson, Secretary of Health, Education and Welfare, by and through his attorney, George W. F. Cook, United States Attorney for the District of Vermont, pursuant to Rule 12(b)(2), Federal Rules of Civil Procedure, respectfully moves this Honorable Court to dismiss this Complaint and for cause states:

1. This Honorable Court lacks jurisdiction as the Complaint fails to show that jurisdiction exists under 28 U.S.C. 1331, 28 U.S.C. 1361, or 28 U.S.C. 2201.

WHEREFORE, defendant respectfully prays this Honorable Court grant this Motion to Dismiss for Lack of Judgment.

Dated at Rutland, District of Vermont, this 11th day of August, 1972.

GEORGE W. F. COOK
United States Attorney

By /s/ Norman Cohen
NORMAN COHEN
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

[Filed August 16, 1972]

[Title Omitted in Printing]

APPENDIX A TO MEMORANDUM OF LAW IN SUPPORT OF MOTIONS OF DEFENDANT RICHARDSON

The average weekly and monthly unemployment compensation figures used herein are derived from statistics found in the *Monthly Labor Review, December 1971*, Vol. 94, No. 12, published by the United States Department of Labor, Bureau of Labor Statistics, at page 100:

BEST COPY AVAILABLE

10. Unemployment insurance and employment service operations [1]

[All items except average benefits amounts are in thousands]

Item	1970				1971								
	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
Employment service: [2]													
New applications for work	778	837	779	730	864	739	833	761	777	1,005	815	779	p 703
Nonfarm placements	346	304	289	230	257	233	295	309	308	365	318	367	p 323
State unemployment insurance program:													
Initial claims [3 4]	1,079	1,208	1,432	1,863	1,756	1,291	1,265	1,111	984	1,152	1,468	p 1,266	p 1,035
Insured Unemployment [5] (average weekly volume) [6]	1,607	1,724	2,017	2,369	2,799	2,751	2,577	2,283	2,001	1,893	1,993	1,912	1,739
Rate of insured unemployment [7]	3.0	3.2	3.7	4.4	5.2	5.2	4.8	4.3	3.8	3.6	3.8	3.6	3.3
Weeks of unemployment compensated	6,065	6,058	6,521	8,741	9,667	9,698	10,758	9,224	p 7,431	p 7,542	p 6,420	p 6,409	p 5,529
Average weekly benefit amount for total unemployment	$50 64	$51 45	$52 24	$52 43	$52 83	p $52 13	$52 94	$52 28	p $57 68	$57 72	p $55 19	p $56 06	p $56 16
Total benefits paid	$300,157	$304,212	$342,060	$461,465	$526,744	p $557,869	$631,032	$541,933	p $434,463	$446,691	p $397,136	p $405,183	p $372,815
Unemployment compensation for ex-servicemen: [8]													
Initial claims [3 9]	46	49	51	58	56	50	57	51	43	54	53	53	p 48
Insured unemployment [5] (average weekly volume)	81	83	97	113	127	128	128	121	113	114	120	120	106
Weeks of unemployment compensated	355	331	363	494	515	509	586	533	p 462	p 506	p 489	p 512	p 469
Total benefits paid	$18,344	$17,336	$19,147	$26,226	$27,796	$28,273	$33,254	$30,757	p $27,010	p $30,117	p $29,221	p $30,703	p $28,157
Unemployment compensation for Federal civilian employees: [9 10]													
Initial claims [3]	13	15	12	13	15	11	12	12	10	20	16	12	p 12
Insured unemployment [5] (average weekly volume)	32	33	35	36	37	37	35	31	29	31	36	35	33
Weeks of unemployment compensated	136	136	138	168	152	148	167	139	p 119	p 126	p 137	p 155	p 143
Total benefits paid	$6,862	$6,971	$7,283	$8,986	$8,491	$8,785	$10,435	$8,912	p $7,459	p $7,843	p $8,234	p $8,753	p $8,503
Railroad unemployment insurance:													
Applications [11]	12	16	8	9	14	38	30	85	36	45	89	98	100
Insured unemployment (average weekly volume)	18	22	20	20	31	22	19	20	18	13	15	32	33
Number of payments [12]	36	46	42	46	59	73	67	119	63	68	99	105	163
Average amount of benefit payment [13]	$85 41	$82 07	$92 97	$95 04	$81 55	$61 46	$70 01	$38 34	$55 53	$58 57	$45 07	$83 22	$63 35
Total benefits paid [14]	$2,877	$3,482	$3,736	$4,176	$4,674	$4,352	$4,566	$4,364	p $3,522	$4,159	$3,800	$8,698	$11,134
All programs: [15]													
Insured unemployment [6]	1,746	1,889	2,233	2,632	3,195	3,216	3,091	2,756	2,443	2,332	2,431	2,349	2,174

[1] Includes data for Puerto Rico.
[2] Includes Guam and the Virgin Islands.
[3] Initial claims are notices filed by workers to indicate they are starting periods of unemployment. Excludes transition claims under State programs.
[4] Includes interstate claims for the Virgin Islands.
[5] Number of workers reporting the completion of at least 1 week of unemployment.
[6] Initial claims and State insured unemployment include data under the program for Puerto Rican sugarcane workers.
[7] The rate is the number of insured unemployed expressed as a percent of the average covered employment in a 12-month period.
[8] Excludes data on claims and payments made jointly with other programs.
[9] Includes the Virgin Islands.
[10] Excludes data on claims and payments made jointly with State programs.
[11] An application for benefits is filed by a railroad worker at the beginning of his first period of unemployment in a benefit year; no application is required for subsequent periods in the same year.
[12] Payments are for unemployment in 14-day registration periods.
[13] The average amount is an average for all compensable periods, not adjusted for recovery of overpayments or settlement of underpayments.
[14] Adjusted for recovery of overpayments and settlement of underpayments.
[15] Represents an unduplicated count of insured unemployment under the State, Ex-servicemen and UCFE programs and the Railroad Unemployment Insurance Act. Includes claims filed under Extended Duration (ED) provisions of regular State laws.
p = preliminary.

SOURCE: U.S. Department of Labor, Office of Financial and Management Information Systems for all items except railroad unemployment insurance which is prepared by the U.S. Railroad Retirement Board.

NOTE: Dashes indicate data not available.

APPENDIX B TO MEMORANDUM OF LAW IN SUPPORT OF MOTIONS OF DEFENDANT RICHARDSON

The average monthly AFDC payment rate per family is derived from Table 2, *Public Assistance Statistics, September 1971*, DHEW Publication No. (SRS) 72-03100, NCSS Report A-2 (9/71), which is published by the National Center for Social Statistics, Social Rehabilitation Services, United States Department of Health, Education and Welfare.

Table 2.--Amount of public assistance payments in the United States, by month, September 1970-September 1971 1/

Year and month	Total	Money payments to recipients 2/							Medical assistance 3/			Emergency assistance 4/	Payments to intermediate care facilities 5/
		Total	Federally aided programs					General assistance 6/	Total	Federally aided program	General assistance 6/		
			Total	Old-age assistance	Aid to the blind	Aid to the permanently and totally disabled	Aid to families with dependent children						
	Amount of assistance (In thousands)												
1970													
September 7/	$1,296,311	$747,987	$696,338	$156,638	$8,239	$87,546	$443,915	$51,649	$465,425	$[illegible]	$8,477	$1,019	$[illegible]
October 8/	1,286,901	755,408	699,246	157,193	8,321	87,930	446,202	56,162	497,052	479,611	8,241	1,237	[illegible]
November	1,359,747	762,105	709,018	155,691	8,272	87,702	457,353	57,087	439,957	432,022	7,935	1,129	[illegible]
December 7/	1,383,118	808,361	747,290	161,[illegible]	8,446	91,325	489,577	61,071	529,945	521,635	8,310	1,474	[illegible]
1971													
January	1,365,[illegible]	807,[illegible]	743,[illegible]	160,[illegible]	8,409	91,538	[illegible]	63,980	500,[illegible]	502,191	7,[illegible]	1,[illegible]	[illegible]
February	1,[illegible]	818,[illegible]	751,[illegible]	160,213	[illegible]	92,452	[illegible]	66,[illegible]	502,[illegible]	[illegible]	9,[illegible]	1,[illegible]	[illegible]
March 7/	1,462,101	841,[illegible]	775,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1,[illegible]	[illegible]
April	1,[illegible]	834,[illegible]	770,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	64,[illegible]	[illegible]	[illegible]	[illegible]	1,[illegible]	[illegible]
May	1,[illegible]	833,[illegible]	770,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 7/	1,462,059	831,700	771,068	155,562	8,353	97,442	[illegible]	60,612	575,[illegible]	[illegible]	8,[illegible]	1,[illegible]	[illegible]
July	1,[illegible]	837,[illegible]	775,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
August	1,476,731	849,017	785,559	155,[illegible]	8,[illegible]	101,621	[illegible]	63,459	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
September 7/	1,446,398	859,314	796,[illegible]	152,479	8,253	101,[illegible]	[illegible]	63,[illegible]	549,[illegible]	540,[illegible]	8,[illegible]	1,[illegible]	[illegible]
	Percentage change from preceding month												
1970													
September	+3.7	+2.7	+3.0	+1.0	-.1	+.7	+4.2	-.9	+4.9	+4.9	+8.4	-1.1	+[illegible]
October	+8.9	+1.8	+1.2	+.4	+1.0	(9/)	+1.8	+8.9	+4.9	+5.0	-3.0	+71.4	+1.9
November	+.8	+1.0	+.9	-1.0	-.6	+.2	+1.9	+1.6	+.4	+.9	-3.7	-8.7	+.4
December	+6.2	+5.2	+5.1	+3.8	+2.1	+4.1	+5.8	+7.0	+9.2	+9.2	+4.7	+30.5	+1.8
1971													
January	-.8	+.7	+.4	-.5	-.4	+.6	+.7	+4.6	-3.9	-3.7	-11.6	+23.1	+6.4
February	+.6	+1.3	+1.1	-.4	-1.1	+.7	+1.7	+3.5	-1.3	-1.7	+27.5	+[illegible]	+[illegible]
March	+5.5	+2.6	+2.2	+.4	+1.9	+2.3	+2.7	-.4	+12.6	+12.8	+1.7	-15.9	+.8
April	+.2	+.1	+.3	(10/)	+.6	+1.4	+.2	-2.4	-.2	(x/)	-4.3	-17.[illegible]	+6.4
May	+1.3	-.2	(9/)	+.4	-.2	+1.1	-.4	-2.6	+4.3	+[illegible]	+11.3	+3.[illegible]	-2.9
June	-1.5	-1.1	-.9	-3.7	-1.1	+.5	-.3	-3.2	-2.8	-2.6	-11.0	-13.[illegible]	+[illegible]
July	+2.8	+1.7	+1.6	+.7	+.2	+1.0	+2.2	+2.8	+3.9	+3.1	+28.6	+[illegible]	+17.1
August	-1.0	+1.3	+1.3	-.2	+.5	+3.2	+1.4	+1.0	-4.4	-4.1	-22.6	+[illegible]	-7.[illegible]
September	-1.2	+.4	+.5	-2.0	-1.4	-.1	+1.3	-.6	-3.6	-3.6	+.4	-[illegible]	+[illegible]
	Percentage change from same month of preceding year												
1971													
September	+16.8	+15.0	+14.4	-2.7	+0.7	+16.0	+20.5	+27.3	+18.0	+18.4	+0.2	+[illegible]	+33.6

1/ All data subject to revision.
2/ Includes nonmedical vendor payments other than those for institutional services in intermediate care facilities.
3/ Amounts represent primarily bills paid to medical vendors during the month and therefore are subject to fluctuations unrelated to provision of medical services.
4/ Data include both money payments to families and medical vendor payments. Such emergency assistance to needy families with children authorized under title IV-A. Does not include New York City.
5/ Data represent payments to vendors of institutional services in intermediate care facilities. Federal financial participation in such payments is limited to those in behalf of individuals who qualify for OAA, AB, or APTD under programs operated under State plans approved under titles I, X, XIV, or XVI.
6/ Partly estimated. Does not include Idaho, Indiana, Kentucky, Nebraska, Nevada, New Mexico, Puerto Rico, and Vermont; no program or data not available.
7/ Total amounts and aid to families with dependent children money payments include grants for special needs in Massachusetts as follows: September 1970, for October-December 1970 quarter, $6,[illegible],000; December 1970, for January-March 1971 quarter, $6,432,000; March 1971, for April-June 1971 quarter, $7,418,000; June 1971, for July-September 1971 quarter, $7,580,000; and September 1971, for October-December 1971 quarter, $6,965,500. Percentage changes based on data excluding these amounts.
8/ Total amounts and aid to families with dependent children money payments include $844,000 representing grants for clothing adjustment in Rhode Island for fiscal year 1971. Percentage changes based on data excluding this amount.
9/ Decrease of less than 0.05 percent.
10/ Increase of less than 0.05 percent.

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed August 30, 1972]

[Title Omitted in Printing]

INTERROGATORIES

To: Bert Smith, ANFC Director, Vermont Department of Social Welfare.

1. State your name and professional qualifications.

2. How long have you been connected with the Department of Social Welfare?

3. What is your present position with the Department of Social Welfare?

3. How long have you held that position?

5. Describe your present duties.

6. Are you familiar with the provisions of 42 U.S.C. § 607(b)(2)(c)(ii) and F.S.P.M. 2331.31(3)?

7. Do these provisions operate to exclude families from ANFC where the father is receiving unemployment compensation?

8. If a family is denied ANFC-UF due to 2331.31(3) is the family eligible for general assistance?

9. If the answer to #8 is affirmative, are the total benefits from Unemployment Compensation and General Assistance likely to be as high as ANFC benefits?

10. If the answer to #9 is negative, explain why not.

11. Do you have an opinion as to whether 42 U.S.C. § 607 and F.S.P.M. 2331.31(3) discriminates against certain families on the basis of sex?

12. If the answer to #11 is affirmative, please explain the basis for your opinion, giving examples.

13. Do you have an opinion as to whether the exclusion provided by section 607 and 2331.31(3) is arbitrary and irrational.

14. If the answer to #13 is affirmative, please explain the basis for your opinion.

15. Can you speak for the Department of Social Welfare on policy matters relating to the ANFC program?
16. If the answer to #15 is affirmative would the Department of Social Welfare like to see § 607(b)(2)(c)(ii) deleted so that otherwise eligible families could supplement unemployment compensation with ANFC up to the State needs standard?
17. Do you have a personal opinion on the question asked in #16?
18. If the answer to #17 is affirmative, please state your opinion giving reasons.
19. Do you have an opinion as to whether 607(b)(2)(c)(ii) and 2331.31(3) encourage fathers receiving Unemployment Compensation to desert their families so that the family will be eligible for ANFC?
20. If the answer to #19 is affirmative, please state your opinion.

/s/ Richard S. Kohn
RICHARD S. KOHN
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont
Attorney for Plaintiffs

August 28, 1972

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed November 15, 1972]

[Title Omitted in Printing]

MEMORANDUM CONCERNING AVERAGE MONTHLY PAYMENTS UNDER ADFC-UF AND UNEMPLOYMENT INSURANCE

This memorandum deals with certain statistics presented in the *Memorandum of Law in Support of Motions of Defendant Richardson* in a case (Civil No. 6550) brought before the United States District Court, District of Vermont. On page 12 of the above mentioned memorandum it is stated that:

> On a nationwide basis, the level of AFDC payments is lower than the average unemployment compensation payment. Statistics for the period October 1970—September 1971 show that the average weekly benefit under unemployment compensation was $54.09 or about $234.39 monthly. (See Appendix A.) During the same period, however, the average AFDC family received $186.58 per month. (See Appendix B.)

Upon examining these figures and the statistical sources from which they were derived several points became clear. First, since the controversy at hand only involves the Unemployed Father segment of the AFDC population in those states participating in the AFDC-UF program, the most relevant AFDC data were not employed. In the same *Public Assistance Statistics* series, cited in Appendix B of the above mentioned memorandum and the source of the crude nationwide AFDC average quoted above, there are statistics by state, on average family payments under the AFDC-UF program. This latter set of figures provides the relevant basis of comparison with average State Unemployment Insurance payments.

The second observation was that comparing these two programs on the basis of nationwide averages was very misleading. Since the levels of payment in both programs are determined in, and vary considerably among, the different states, a nationwide average obviates meaningful comparison. Instead, average AFDC-UF payments should have been compared with average UI payments in those States participating in the AFDC-UF program.

The remainder of this memorandum presents more recent data on AFDC UF and UI payments for Fiscal Year 1972 (July 1971-June 1972) which provide a more relevant comparison of average payments under the two programs.

Table 1, on the following page, presents figures on average payment under the two programs in FY'72 for the 25 States participating in the AFDC-UF program during that year. Data on UI payments were provided by the U.S. Department of Labor (see Appendix A) and data on AFDC-UF payments were compiled from 12 monthly issues of U.S. Department HEW *Public Assistance Statistics* (see Appendix B). By comparing the two columns in Table I we can see that average AFDC-UF payments were greater than average UI payments in 16 of 25 States in FY'72. Average UI payments were higher in the remaining 9 States. In addition, average payment figures for the 25 States together were: AFDC-UF, $261.19; UI, $237.44—although it must again be stressed that these averages conceal meaningful differences which exist among the 25 States. (The difference in State average payments can be seen graphically in Chart 1 which orders the States on the basis of their average AFDC-UF payments.)

In 16 States the amounts by which average monthly AFDC-UF payments exceed average monthly UI payments range from $1.35 to $101.04. In the remaining 9 states where average UI payments are higher, the range is from $17.20 to $90.28. These differences are presented graphically in Chart 2 which also indicates that 81 per cent of families receiving AFDC-UF lived in the 16 States where average AFDC-UF payments were higher

than average UI payments in FY'72. Only 19 per cent of AFDC-UF families lived in the remaining 9 States where average UI payments were higher.

TABLE 1

COMPARISON OF AVERAGE MONTHLY UNEMPLOYMENT INSURANCE PAYMENTS WITH AVERAGE AFDC-UF MONTHLY FAMILY PAYMENTS, BY STATES WITH AFDC-UF PROGRAMS IN FISCAL YEAR 1972
(July '71 - June '72)

State [c]	Average Monthly Unemployment Compensation Payment [a]	Average Monthly AFDC-UF Family Payment [b]
1. California	$251.17	$236.71
2. Colorado	253.54	272.57
3. Delaware	186.48	229.70
4. District of Columbia	189.60	279.88
5. Hawaii	367.14	283.49
6. Illinois	281.45	243.07
7. Kansas	251.28	222.31
8. Maine	220.46	211.64
9. Maryland	203.71	260.69
10. Massachusetts	303.21	252.19
11. Michigan	309.56	254.43
12. Minnesota	333.11	232.07
13. Missouri [d]	175.30	217.40
14. Nebraska	208.91	207.56
15. New York	327.65	258.64
16. Ohio	205.07	231.59
17. Oklahoma	199.90	192.98
18. Oregon	222.73	205.11

TABLE 1 (Continued)

State [c]	Average Monthly Unemployment Compensation Payment [a]	Average Monthly AFDC-UF Family Payment [b]
19. Pennsylvania	265.96	261.18
20. Rhode Island	234.99	252.19
21. Utah	236.57	229.74
22. Vermont	308.00	255.50
23. Washington	242.09	261.31
24. West Virginia	141.20	175.95
25. Wisconsin [e]	357.54	270.98
U.S. Average [f]	261.19	237.44

[a] Compiled from monthly *Public Assistance Statistics*, National Center for Social Statistics Report Series A-2, U.S. Dept. of HEW.

[b] Unpublished data supplied by State Employment Security Agencies to U.S. Dept. of Labor, Manpower Administration.

[c] Only those states with AFDC-UF programs have been included.

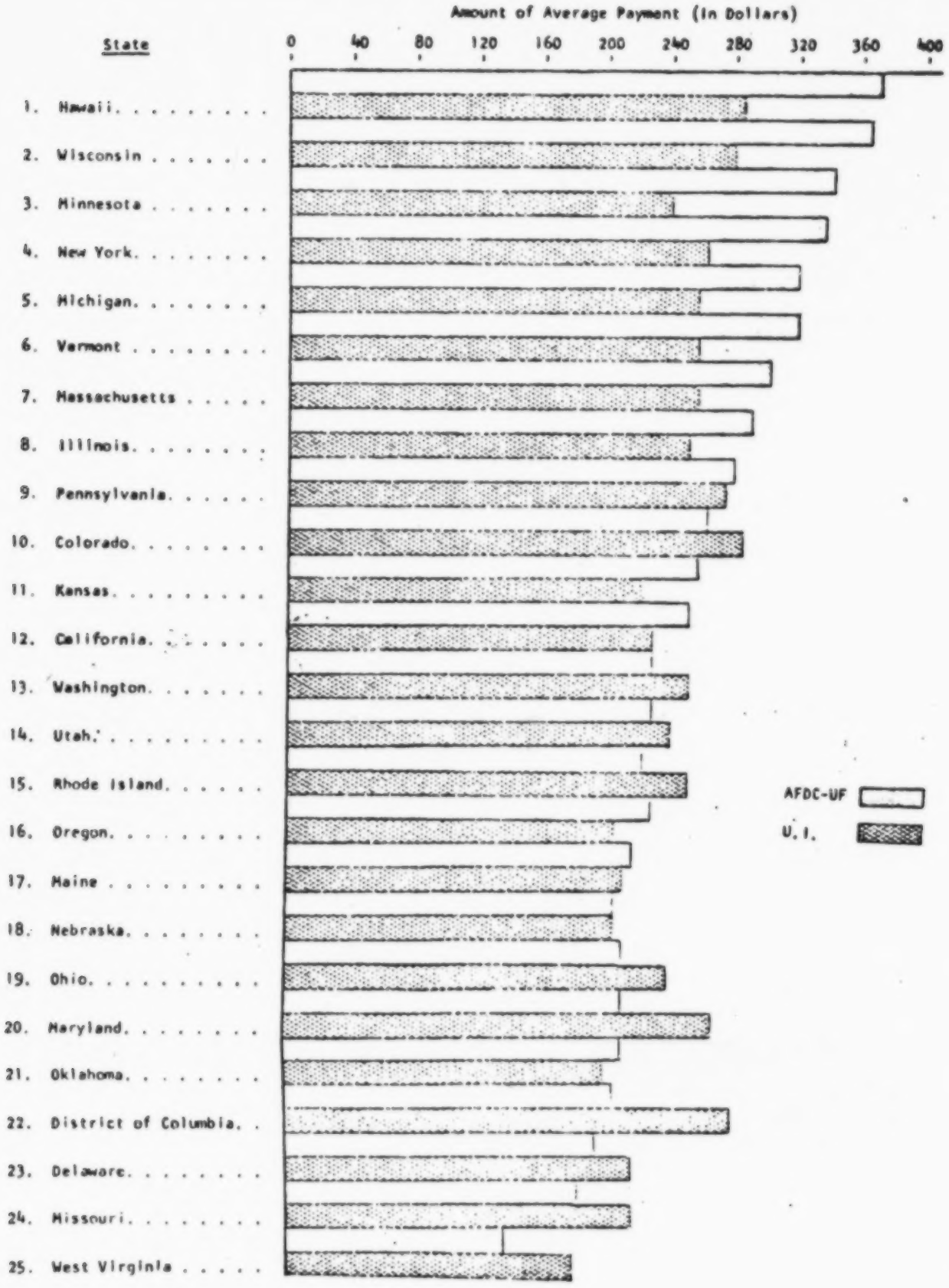
[d] AFDC-UF data for six months, July-Dec. '71.

[e] AFDC-UF data for seven months, Dec. '71 - June '72.

[f] U.S. Average for AFDC-UF is for all States with AFDC-UF programs. U.S. Average for Unemployment Compensation is for all States (except New Jersey) plus the District of Columbia and Puerto Rica.

CHART 1

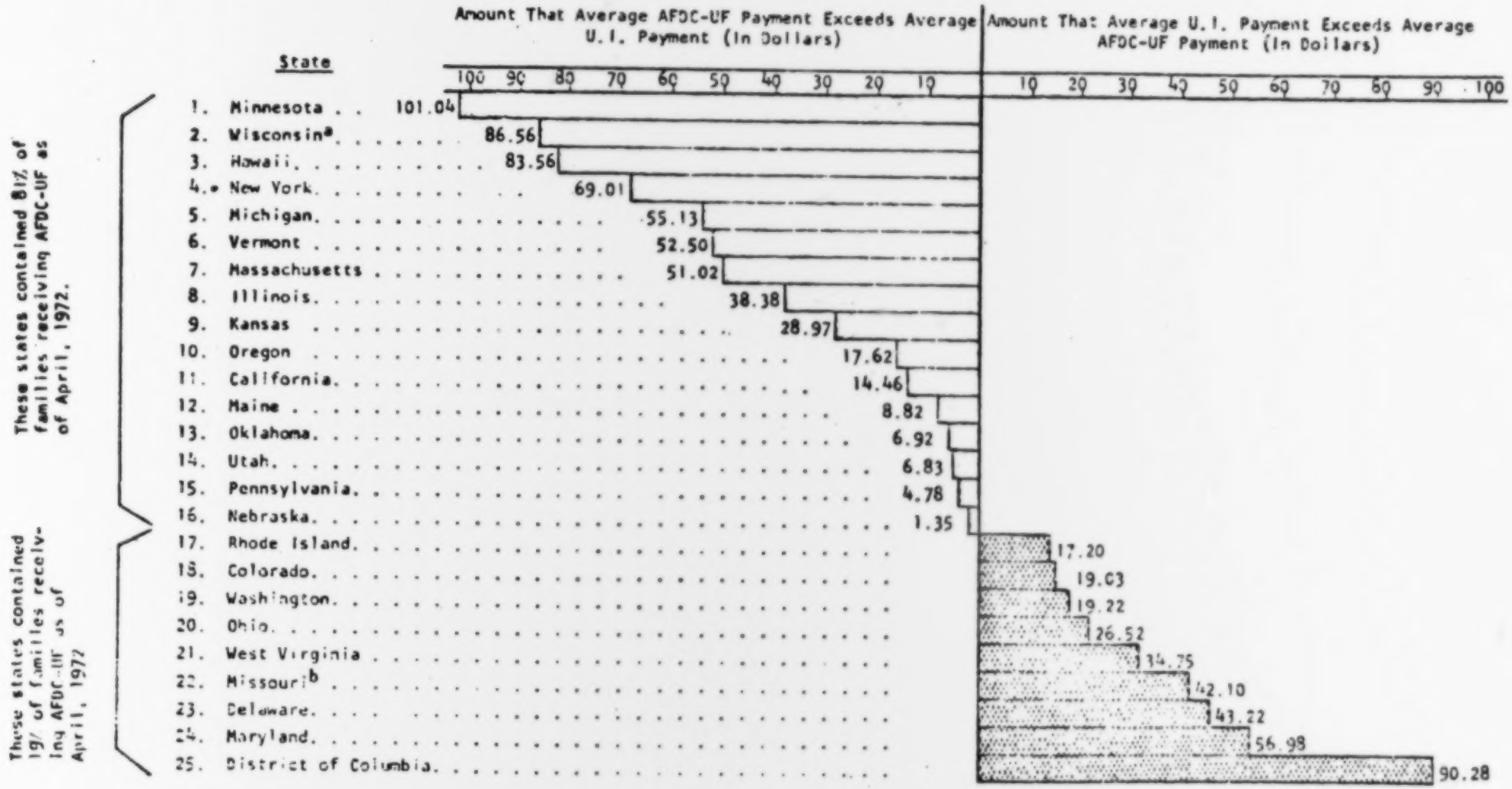
COMPARISON OF AVERAGE MONTHLY UNEMPLOYMENT INSURANCE PAYMENTS WITH AVERAGE AFDC-UF MONTHLY FAMILY PAYMENTS, BY STATES ORDERED BY AMOUNT OF AFDC-UF PAYMENT, FISCAL YEAR 1972 (JULY '71 - JUNE '72)



Source: Table 1.

CHART 2

COMPARISON OF AVERAGE AFDC-UF AND U.I. PAYMENTS, BY STATE FOR FISCAL YEAR 1972 (JULY '71 - JUNE '72)



Source: Table 1.

[a]Wisconsin AFDC-UF figures are averaged for seven months, December 1971 to June 1972.

[b]Missouri AFDC-UF figures are averaged for six months, July 1971 to December 1971.

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Finally one must consider what these averages for the two programs mean and examine, if possible, the distribution of recipients both above and below the averages. It must be first emphasized that since we are dealing with average figures there are certainly a large number of families receiving higher AFDC-UF benefits even in States where *average* UI is higher than average AFDC-UF. Secondly we must remember that the two programs are designed to benefit two different populations: AFDC-UF, as other public assistance programs, is exclusively for the "poverty" population while UI is to provide temporary benefits to *all* unemployed who fall under its coverage, be they rich or poor and regardless of other sources of nonincome wealth. This fact is important when considering the meaning of the average UI payments. Sources in the Labor Department indicate (and information on the various State plans back this up) that most UI eligibility requirements, being largely dependent on level of salary, are such that most covered workers who are employed *full time* in jobs with salaries over the "poverty level" would be eligible to receive benefits at the State-set maximum. They further indicate that a large part of those workers who receive UI payments substantially below the maximum are those employed full-time in jobs with extremely low wages or employed on a part-time or seasonal basis. From the growing literature on poverty as well as from personal observation most would agree that among the poorer part of the population (with few if any other sources of income or wealth) employment is more likely to be in extremely low-paying full-time work or in part-time or seasonal work. This means that these "marginally-employed" workers, the very people who might otherwise qualify for AFDC-UF, are *more likely* to be those who receive UI benefits which are substantially below the State averages. (Appendix C presents a listing of the percentages of UI recipients in each State who are eligible for maximum payments.)

In contrast to UI payments, which vary largely according to the worker's previous salary, AFDC payments vary according to the presence of other income but pri-

marily according to family size. Thus, the level of benefits for the poorest AFDC recipients is determined almost exclusively by family size. It is generally recognized, and substantiated by the figures shown in Table 2 below, that poor families, particularly nonwhite poor families, tend to be larger. This, in turn, implies that the same families, who would be *more likely* to receive the UI payments under the State averages because of the previous marginal employment status of the father, would otherwise be eligible for higher AFDC-UF benefits because of larger family size.

TABLE 2

MEAN FAMILY SIZE ABOVE AND BELOW THE POVERTY LEVEL, BY RACE, 1970

	Families			
	Total	White	Black	Spanish-American
Above Poverty Line	3.52	3.48	3.88	4.16
Below Poverty Line	3.88	3.57	4.66	4.80

Source: U.S. Bureau of the Census, Census of Population: 1970, General Social and Economic Characteristics (Final Report PC(1)-C1, United States Summary), Table 95 p. 400.

This is further substantiated when, as of June 1972, we note that in every State except two (D.C. and Rhode Island) participating in the AFDC-UF program, average AFDC-UF family payments are higher than average non-UF, AFDC family payments by substantial amounts. In Vermont, for example non-UF AFDC payments averaged $225.81 per family while AFDC-UF payments averaged $331.08 per family. (For differences in other States, see Appendix D.) Thus, in sum, we can see that even State averaging tends to hide the fact that families eligible for AFDC-UF payments are *more likely* to receive payments at or above average AFDC payments and

also *more likely* to receive UI payments below the various State averages.

A final important point to note concerns *maximum* payments allowable under the two programs. All States set legal maximums on IU payments while only a small number do for AFDC payments. Table 3, on the following page, compares these maximums (either legal or administrative) and we can see that in only one State (West Virginia), out of 25 with AFDC-UF programs, is the legal maximum for UI payments higher than it is for AFDC. In the other 24 States the AFDC maximum is higher than that for UI payments or there simply is no legal or administrative maximum placed on AFDC payments.

/s/ Richard S. Kohn
RICHARD S. KOHN
Vermont Legal Aid, Inc.
56 Railroad Street
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November 13, 1972

DAVID WILCOCK
Research Analyst, Legal Action Support Project
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1990 M Street, N.W.
Washington, D.C. 20036
November 10, 1972

TABLE 3

COMPARISON OF STATE LEGAL AND/OR ADMINISTRATIVE MAXIMUMS ON PAYMENTS UNDER THE AFDC AND UNEMPLOYMENT INSURANCE PROGRAMS, 1971-72

State	State AFDC Legal Family Payment maximums (L) or Administrative maximums on money projects (A)	State Legal Maximums for Unemployment Insurance Payments (10/2/72-1/1/73)[c]	Amount AFDC Maximum Exceeds UI Maximum
1. California	$471 (L)[a]	$322.50	$148.50
2. Colorado	No maximum	369.80	--
3. Delaware	$555 (L)[a]	279.50	275.50
4. District of Columbia	No maximum	451.50	--
5. Hawaii	No maximum	387.00	--
6. Illinois	No maximum	219.30-417.10[d]	--
7. Kansas	No maximum	275.20	--
8. Maine	$399 (L)[a]	270.90	128.10
9. Maryland	No maximum	335.40	--
10. Massachusetts	No maximum	356.90-554.70[d]	--
11. Michigan	No maximum	240.80-395.60[d]	--
12. Minnesota	No maximum	275.20	--
13. Missouri	$322 (A)[a]	270.90	51.10
14. Nebraska	$396 (L)[a]	258.00	138.00
15. New York	No maximum	322.50	--
16. Ohio	No maximum	245.10-347.10[d]	--
17. Oklahoma	$320 (A)	258.00	62.00
18. Oregon	No maximum	266.60	--
19. Pennsylvania	No maximum	365.50-399.90[d]	--
20. Rhode Island	No maximum	339.70-425.70[d]	--
21. Utah	$410 (L)	348.30	61.70
22. Vermont	No maximum	331.10	--
23. Washington	No maximum	335.40	--
24. West Virginia	$182 (L)	322.50	(-140.50)[e]
25. Wisconsin	*[b]	378.40	--

Source: Data on UI State maximums provided by the U.S. Dept. of Labor, Manpower Administration. Data on legal and administrative maximums for AFDC: U.S. Dept. HEW, Social and Rehibilitation Service, Characteristics of State Public Assistance Plans under the Social Security Act (Public Assistance Report No. 50, 1971); and USDHEW, SRS, Nation Center for Social Statistics, State Maximums and other Methods of Limiting Money Payments to Recipients of the Special Types of Public Assistance, July 1971 (NCSS Report D-3).

[a] Maximums calculated for 9 person families.

[b] Wisconsin law states that state average of money grants to persons must not exceed 120% of national average of such aid.

[c] Weekly maximums multiplied by 4.3 to get monthly maximums for comparison.

[d] Two maximums are given in those states which provide greater benefits for unemployed workers with dependent children.

[e] Only state where maximum UI exceeds maximum AFDC.

APPENDIX A

AVERAGE STATE UNEMPLOYMENT INSURANCE BENIFITS, FY '72

States Ranked By Average Weekly Benefit Amount

Hawaii	$65.93	New Hampshire	$51.23
Connecticut	65.70	North Dakota	50.83
District of Columbia	65.09	Missouri	50.56
Colorado	63.39	Arizona	49.96
Wisconsin	63.02	Louisiana	49.84
Washington	60.77	Kentucky	49.51
Pennsylvania	60.74	Maine	49.22
Maryland	60.69	Nebraska	48.27
New York	60.15	Oregon	47.79
Vermont	59.42	Virginia	47.03
Michigan	59.17	New Mexico	46.04
Massachusetts	58.65		
Rhode Island	58.65	INDIANA	45.96
Nevada	58.10		
Iowa	56.85	Alabama	45.29
Illinois	56.53	Texas	44.95
		Oklahoma	44.88
U.S. TOTAL	55.22	Georgia	44.47
		Tennessee	44.10
California	55.05	Arkansas	43.75
Minnesota	53.97	Montana	43.72
Ohio	53.86	Florida	43.14
Utah	53.43	South Carolina	43.12
Delaware	53.42	South Dakota	42.55
Alaska	52.86	West Virginia	40.92
Idaho	51.84	North Carolina	39.73
Kansas	51.70	Mississippi	37.41
Wyoming	51.44	Puerto Rico	33.53

Source: U.S. Dept. of Labor, Manpower Administration.

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APPENDIX B

The following twelve pages present the relevant data for AFDC-UF payments by state, FY '72. DHEW, NCSS Report A-2 (7-7) thru 6/72) *Public Assistance Statistics.*

Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, July 1971 1/

[Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		June 1971 in--		July 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	134,449	652,539	[illegible]	$33,558,441	$249.60	$51.49	-17.9	-13.7	+22.2	+35.6
Calif.....	[illegible]	[illegible]	165,512	13,213,2[illegible]	[illegible]257.59	48.39	-7.3	-6.9	+21.2	+35.2
Colo.....	2,773	[illegible]	5,763	534,1[illegible]	[illegible]257.68	53.02	-2.0	-5.1	+60.4	+61.9
Del.....	176	904	550	32,630	[illegible]185.40	36.50	-2.2	+6.8	+162.0	+190.1
D. C.....	554	2,655	1,576	100,768	[illegible]182.13	46.61	+1.6	+2.7	(3/)	(3/)
Guam.....	2	20	16	741	(4/)	(4/)	(4/)	(4/)	---	---
Hawaii.....	750	3,457	1,969	269,[illegible]48	[illegible]354.49	77.81	+6.4	+5.7	+146.8	+198.5
Ill.....	15,[illegible]5	77,127	47,714	4,1[illegible]3,[illegible]26	[illegible]272.51	53.08	-.5	-3.6	+164.7	+164.0
Kans. 5/.....	419	1,[illegible]7[illegible]	2,644	244,[illegible]21	[illegible]268.51	54.48	+2.1	+4.6	+134.1	+144.7
Maine.....	746	3,[illegible]6[illegible]	2,529	[illegible]7,[illegible]32	[illegible]211.64	39.93	-14.3	-13.8	+177.5	+215.8
Mi.....	697	3,211	1,906	138,[illegible]75	[illegible]198.10	43.00	+3.4	+5.0	+68.8	+105.7
Mass.....	7,443	[illegible]0,[illegible]00	8,260	662,321	[illegible]271.11	51.34	+3.4	+10.7	+83.4	+65.1
Mich.....	9,[illegible]63	[illegible]7,815	20,079	2,[illegible]05,703	[illegible]302.77	61.19	+3.3	+3.4	+153.5	+203.0
Minn.....	1,[illegible]40	[illegible],6[illegible]8	2,[illegible]40	332,618	[illegible]313.79	67.77	+3.3	+2.3	(3/)	(3/)
Mo.....	[illegible]44	3,571	2,249	11[illegible],277	[illegible]171.[illegible]5	31.[illegible]6	+7.5	+7.[illegible]	+202.9	+215.4
Nebr.....	2[illegible]6	1,[illegible]20	[illegible]40	41,717	[illegible]238.[illegible]1	30.[illegible]4	-4.9	-6.0	+88.0	+109.8
N. Y.....	[illegible]5,[illegible]00	81,168	49,[illegible]8[illegible]	5,[illegible]1[illegible],[illegible]16	[illegible]333.40	62.[illegible]2	-11.[illegible]	-2.3	+20.3	+37.2
Ohio.....	3,[illegible]11	[illegible]2,[illegible]19	25,[illegible]00	1,8[illegible],[illegible]60	[illegible]212.[illegible]2	42.90	+1.1	+1.4	+156.5	+167.5
Okla.....	[illegible]91	1,[illegible]60	1,[illegible]72	69,681	[illegible]194.21	37.60	-5.2	-3.9	+154.8	+176.1
Oreg.....	2,[illegible]00	11,[illegible]1	[illegible],518	[illegible]38,[illegible]06	[illegible]220.69	49.23	+[illegible].5	-21.7	+[illegible].0	+20.2
Pa.....	[illegible],[illegible]26	[illegible]7,[illegible]6	[illegible],[illegible]19	[illegible]64,[illegible]45	[illegible]240.17	50.69	-2.5	-.[illegible]	-6.0	+8.5
R. I.....	[illegible]0[illegible]	[illegible],[illegible]19	2,[illegible]83	[illegible]97,[illegible]3	[illegible]233.60	48.31	+1.0	-2.[illegible]	+[illegible]4.3	+169.6
S. [illegible].....	[illegible],[illegible]4	[illegible],[illegible]3	[illegible],[illegible]25	[illegible]60,[illegible]04	[illegible]239.41	47.64	-24.0	-[illegible]7	-12.0	-6.4
Tex.....	[illegible]40	[illegible],[illegible]6	1,[illegible]40	[illegible]0[illegible],[illegible]1	[illegible],[illegible]33.[illegible]	60.27	-7.1	-[illegible].2	+[illegible]3.1	+220.8
Utah.....	[illegible],[illegible]7	[illegible]3,[illegible]41	[illegible]0,[illegible]21	1,[illegible]4[illegible],[illegible]97	[illegible]2[illegible],[illegible]3[illegible]	53.[illegible]5	-8.0	-[illegible].[illegible]	+[illegible]1.7	+[illegible]0.9
V. Va.....	[illegible],[illegible]41	[illegible]4,[illegible]78	[illegible]2,[illegible]87	[illegible]32,[illegible]15	[illegible],[illegible]50.31	29.20	-[illegible].7	+7.3	-7.6	-7.3

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

2/ Includes all recipients: the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Program initiated August 1970.

4/ Average payment not computed on base of fewer than 50 recipients; percentage change on fewer than 100 recipients.

5/ Preliminary data.

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Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, August 1971 1/

(Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		July 1971 in--		August 1970 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	131,473	633,248	384,728	$32,904,065	$250.27	$51.96	-3.0	-2.1	+16.8	+27.6
Calif. 3/.....	55,393	257,940	157,146	12,973,036	+234.20	50.29	-5.5	-1.8	+17.5	+30.7
Colo.....	2,1[illegible]	10,[illegible]	5,796	540,301	+254.14	53.69	+1.6	+1.1	+47.7	+47.4
Del.....	184	933	570	34,146	+185.58	36.60	+4.4	+4.6	+135.0	+170.9
D. C.....	633	2,6[illegible]	1,[illegible]	122,632	+193.73	45.52	+14.4	+11.7	(4/)	(4/)
Guam.....	2	20	16	751	(5/)	(5/)	(5/)	(5/)	(6/)	(6/)
Hawaii.....	[illegible]	3,[illegible]	2,[illegible]	303,496	+400.92	84.35	+3.8	+12.8	+[illegible]	+[illegible]
Ill.....	15,[illegible]	79,010	48,[illegible]	4,390,284	+283.72	55.44	+2.2	+6.7	+153.9	+163.1
Kans.....	[illegible]	4,463	2,623	242,914	+263.75	54.43	-.4	-.4	+[illegible]	+108.9
Maine.....	753	4,027	2,583	160,315	+212.90	39.81	+1.8	+1.5	+137.0	+141.7
Md.....	763	3,467	2,[illegible]	151,018	+197.93	43.31	+8.6	+9.4	+[illegible]	+99.3
Mass.....	2,[illegible]	10,537	6,[illegible]	596,130	+221.65	56.57	-18.3	-10.0	+[illegible]	+53.1
Mich.....	10,132	49,[illegible]	30,286	3,[illegible],959	+300.73	61.02	+4.4	+4.1	+[illegible]	+183.7
Minn.....	1,201	5,[illegible]	3,230	377,370	+314.21	67.53	+12.9	+13.5	+[illegible]	+247.3
Mo.....	747	3,[illegible]	2,[illegible]	127,677	+170.92	31.99	+11.8	+11.9	+[illegible]	+233.5
Nebr.....	207	1,[illegible]	630	40,938	+197.77	39.18	-1.4	-1.9	+[illegible]	+92.9
N. Y.....	14,[illegible]	70,[illegible]	43,435	4,217,074	+300.17	59.59	-12.8	-17.4	+[illegible]	+3.3
Ohio.....	[illegible]	43,[illegible]	25,[illegible]	1,879,304	+211.93	43.21	+2.2	+2.9	+[illegible]	+156.6
Okla.....	[illegible]	[illegible]	[illegible]	66,772	200.31	38.00	-5.5	-4.5	+[illegible]	+107.6
Oreg.....	[illegible]	11,[illegible]	6,[illegible]	530,613	218.81	47.84	-.5	-1.5	-[illegible]	-[illegible]
Pa.....	[illegible]	16,122	9,433	836,037	247.32	51.91	+1.3	-13.3	-1.0	-16.4
P. I.....	[illegible]	4,[illegible]	2,[illegible]	[illegible],[illegible]	236.43	49.17	+[illegible]	+[illegible]	+[illegible]	+[illegible]
Utah.....	[illegible]	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible]	[illegible].14	45.35	+[illegible]	+37.1	+[illegible]	+[illegible]
Vt.....	[illegible]	[illegible]	[illegible]	[illegible],427	[illegible].36	60.78	-7.2	-6.4	+[illegible]	+[illegible]
Wash.....	[illegible]	20,[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	231.54	54.53	+4.4	+5.5	+[illegible]	+[illegible]
W. Va.....	[illegible]	[illegible],741	[illegible],[illegible]	414,743	132.72	24.77	-11.3	-22.1	-25.7	-32.8

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Estimated by State.

4/ Increase of more than 1,000 percent.

5/ Average payment not computed on base of fewer than 50 recipients; percentage change on fewer than 100 recipients.

6/ Program initiated April 1971.

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Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, September 1971 1/

(Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		August 1971 in--		September 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	129,041	615,155	372,896	3/$32,328,521	3/ $248.51	3/ $52.13	-2.9	3/ -2.5	+9.2	3/ +21.4
Calif. 4/.....	53,769	245,088	148,953	12,277,971	228.35	50.10	-5.0	-5.4	+9.1	+22.3
Colo.....	2,115	9,857	5,662	538,257	254.50	54.61	-2.1	-.4	+36.0	+37.5
Del.....	175	870	525	54,664	312.37	62.83	-6.8	+60.1	+103.7	+287.6
D. C.....	759	3,254	2,229	146,356	192.83	44.98	+20.8	+19.3	+942.9	+726.7
Guam.....	1	7	5	376	(5/)	(5/)	(5/)	(5/)	(6/)	(6/)
Hawaii.....	842	3,865	2,181	329,315	391.11	85.20	+7.4	+8.5	+134.5	+199.8
Ill.....	16,174	82,075	50,277	4,511,863	278.96	54.97	+3.9	+3.0	+158.2	+168.2
Kans. 7/.....	921	4,463	2,623	242,924	263.75	54.43	---	---	---	---
Maine.....	669	3,717	2,393	147,450	214.01	39.67	-7.7	-8.0	+112.2	+114.8
Md.....	716	3,437	2,034	148,020	206.73	43.07	-1.4	-2.0	+78.7	+84.5
Mass.....	2,023	10,408	6,535	3/ 776,530	3/ 255.23	3/ 49.61	-1.2	3/-13.4	+60.0	3/ +33.9
Mich.....	11,115	54,759	33,166	3,323,155	298.08	60.50	+9.7	+8.7	+152.6	+163.9
Minn.....	1,275	5,918	3,426	390,652	313.45	67.53	+5.9	+5.9	+233.2	+248.3
Mo.....	744	4,134	2,606	131,524	172.15	31.82	+3.6	+3.0	+196.6	+209.1
Nebr.....	187	947	594	37,952	202.42	39.14	-7.5	-7.5	+66.7	+78.4
N. Y.....	11,219	56,124	34,500	3,506,822	312.58	62.48	-20.7	-16.8	-20.5	-9.9
Ohio.....	9,330	45,543	27,092	1,969,992	211.14	43.27	+4.7	+4.8	+150.1	+158.0
Okla.....	344	1,799	1,124	67,535	196.32	37.54	+2.4	+1.1	+91.6	+107.8
Oreg.....	2,715	12,703	7,500	629,609	231.90	49.56	+14.5	+18.7	-30.3	-23.5
Pa.....	3,418	16,282	9,527	842,754	246.56	51.76	+1.0	+.7	+.2	-4.8
R. I.....	633	4,300	2,604	210,681	238.60	49.00	+5.8	+5.4	+122.0	+182.3
Utah.....	1,961	9,930	5,763	461,573	230.29	47.14	-1.7	+2.2	+26.8	+25.8
Vt.....	388	1,936	1,167	120,817	311.38	62.41	+1.9	+4.7	+67.6	+84.1
Wash.....	4,532	19,271	10,456	1,094,862	241.58	56.81	-4.8	-.8	+49.7	+46.7
W. Va.....	2,726	14,618	9,994	378,067	138.69	25.52	-11.5	-8.8	-36.0	+36.9

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Amount includes $240,200 representing grants for special needs for the quarter October-December 1971. The average payment and percentage changes exclude this amount. Including this amount the average payments, per family and per recipient, would be, respectively: U. S. total, $250.53 and $52.55; and Massachusetts, $293.95 and $74.01.

4/ Estimated by State.

5/ Average payment not computed on base of fewer than 50 recipients: percentage change on fewer than 100 recipients.

6/ Program initiated April 1971.

7/ Represents data for August; September data not available.

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Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, October 1971 1/

(Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		September 1971 in--		October 1970 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	125,833	601,669	363,080	$32,168,691	$255.65	$53.47	-2.2	+0.4	-1.0	+12.3
Calif.....	51,445	237,123	143,035	12,314,348	239.37	51.93	-3.2	+.3	+.3	+16.1
Colo.....	2,053	9,796	5,654	520,947	253.75	53.18	-.6	-3.2	+24.6	+21.7
Del.....	143	638	355	24,537	171.59	38.46	-26.7	-35.1	+4.2	+40.9
D. C.....	691	3,045	2,063	144,885	209.67	47.58	-6.4	-1.0	+567.8	+463.3
Guam.....	1	7	5	261	(3/)	(3/)	(3/)	(3/)	(4/)	(4/)
Hawaii.....	878	3,989	2,233	326,182	371.51	81.77	+3.2	-1.0	+122.5	+186.7
Ill.....	16,126	81,817	50,120	4,619,549	286.47	56.46	-.3	+2.4	+140.4	+152.6
Kans.....	901	4,396	2,602	200,451	222.48	45.60	-4.4	-6.4	+67.9	+51.7
Maine.....	622	3,355	2,168	132,831	213.55	39.59	-9.7	-9.9	+82.1	+83.8
Md.....	645	3,204	1,391	138,099	214.11	43.10	-6.8	-6.7	+59.1	+70.0
Mass.....	1,992	10,230	6,419	592,263	297.32	57.89	-1.7	+14.7	+37.3	+26.7
Mich.....	11,372	55,393	33,498	3,354,205	297.57	60.55	+1.2	+1.2	+48.4	+77.5
Minn.....	1,376	6,383	3,678	428,922	311.72	67.20	+7.9	+7.3	+198.1	+228.8
Mo.....	735	4,000	2,524	127,439	173.39	31.86	-3.2	-3.1	+172.7	+184.0
Nebr.....	194	1,026	640	39,905	205.70	38.89	+6.1	+5.4	+64.2	+81.8
N. Y.....	10,076	50,414	30,946	3,276,857	325.21	65.00	-10.2	-6.6	-34.7	-27.5
Ohio.....	9,718	47,249	28,681	1,998,143	205.61	42.29	+3.8	+1.4	+147.4	+150.3
Okla.....	337	1,775	1,114	66,714	197.96	37.59	-1.3	-1.2	+82.6	+91.1
Oreg.....	2,971	13,676	8,059	684,558	230.41	50.06	+7.7	+8.7	-30.3	-20.1
Pa.....	3,452	16,359	9,541	967,853	280.37	59.16	+.5	+14.8	+1.4	+8.8
R. I.....	894	4,325	2,615	210,280	235.21	48.62	+.6	-.2	+72.4	+87.4
Utah.....	1,804	8,943	5,429	425,071	235.63	47.53	-6.6	-5.9	+13.0	+31.3
Vt.....	393	1,939	1,160	122,690	312.19	63.27	+.2	+1.6	+65.3	+82.9
Wash.....	4,385	18,896	10,059	1,108,512	241.77	58.68	-1.9	+1.2	+39.7	+36.1
W. Va.....	2,529	13,691	9,181	343,189	135.70	25.07	-7.6	-9.2	-38.8	-39.1

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2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Average payment not computed on base of fewer than 50 recipients; percentage change on fewer than 100 recipients.

4/ Program initiated April 1971.

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Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, November 1971 1/

/Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		October 197' in--		November 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	127,723	609,550	367,063	$33,384,457	$261.38	$54.77	+1.3	+3.8	-13.7	+4.1
Calif.....	50,071	231,827	139,744	12,486,913	249.38	53.86	-2.2	+1.4	-10.3	+10.2
Colo.....	2,012	9,474	5,471	511,413	254.18	53.98	-3.3	-1.8	+14.6	+13.7
Del.....	191	844	529	38,941	215.14	44.05	+38.6	+58.7	+11.2	+50.3
D. C.....	799	3,464	2,364	162,787	203.74	46.99	+13.8	+12.4	+475.4	+381.8
Guam.....	(3/)	(3/)	(3/)	(3/)	---	---	---	---	---	---
Hawaii.....	925	4,205	2,355	326,410	352.88	77.62	+5.4	+.1	+123.2	+158.1
Ill.....	16,912	85,394	52,140	4,880,140	288.56	57.15	+4.4	+5.6	+135.1	+152.2
Kans.....	823	4,012	2,380	182,238	221.43	45.42	-8.7	-9.1	+37.3	+20.9
Maine.....	167	970	674	37,705	225.78	38.87	-71.1	-71.6	-55.2	-55.8
Md.....	738	3,486	2,041	150,804	204.34	43.26	+8.8	+9.2	+62.2	+72.8
Mass.....	1,973	10,145	6,385	651,760	330.34	64.24	-.8	+10.0	+22.6	+34.0
Mich.....	11,086	54,273	32,798	3,395,686	306.30	62.57	-2.0	+1.2	-44.3	-10.8
Minn.....	1,470	6,703	3,812	462,027	314.30	68.93	+5.0	+7.7	+165.6	+185.9
Mo.....	702	3,862	2,458	128,114	182.50	33.17	-3.3	+.5	+143.2	+163.0
Nebr.....	183	975	611	37,560	205.25	38.52	-5.0	-5.9	+49.8	+63.6
N. Y.....	9,558	47,715	29,220	3,163,731	331.00	66.30	-5.4	-3.5	-41.9	-34.6
Ohio.....	10,067	48,951	29,084	2,046,576	203.30	41.81	+3.6	+2.4	+123.4	+128.2
Okla.....	339	1,804	1,138	68,106	200.90	37.75	+1.6	+2.1	+82.6	+89.1
Oreg.....	3,591	16,482	9,642	783,537	218.19	47.54	+20.5	+14.5	-25.9	-21.6
Pa.....	4,861	23,049	13,465	1,395,636	287.11	60.55	+40.9	+44.2	+44.8	+53.3
R. I.....	895	4,238	2,604	213,470	241.21	49.67	-.6	+1.5	+68.8	+80.2
Utah.....	2,007	9,767	5,877	479,072	238.70	49.05	+9.2	+12.7	+19.7	+47.7
Vt.....	380	1,873	1,117	118,313	311.35	63.17	-3.4	-3.6	+49.0	+54.8
Wash.....	5,491	22,273	12,905	1,284,005	235.55	57.65	+17.9	+15.8	+31.9	+31.5
W. Va.....	2,520	13,556	9,083	374,320	148.56	27.62	-1.0	+9.1	-35.7	-28.0
Wis.....	22	104	65	5,133	(4/)	47.53	---	---	---	---

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2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Program in operation; no payments made during November.
4/ Average payment not computed on base of fewer than 50 families.

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Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, December 1971 1/

(Excludes vendor payments for institutional services in intermediate care facilities and for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		November 1971 in--		December 1970 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	135,731	648,634	391,145	3/$34,895,411	3/ $255.13	3/ $53.39	+6.4	3/ +3.7	-18.6	3/ -5.0
Calif.....	50,868	236,634	142,385	11,977,886	235.47	50.62	+2.1	-4.1	-19.2	-14.2
Colo.....	2,170	10,204	5,940	550,576	253.72	53.64	+8.3	+7.7	+11.4	+9.9
Del.....	160	798	487	27,444	171.52	34.39	-9.7	-29.5	+1.9	-4.4
D. C.....	950	4,233	2,941	192,431	202.56	45.46	+22.2	+18.2	+503.0	+380.2
Guam.....	(4/)	(4/)	(4/)	(4/)	---	---	---	---	---	---
Hawaii.....	977	4,436	2,484	366,443	375.07	82.61	+5.5	+12.3	+108.7	+151.2
Ill.....	18,619	93,668	57,074	5,409,486	290.54	57.75	+9.7	+10.8	+117.5	+121.0
Kans.....	741	3,667	2,194	170,933	230.68	46.61	-8.6	-6.2	+5.6	-4.1
Maine.....	144	858	609	33,115	229.97	38.60	-11.5	-12.2	-66.3	-66.9
Md.....	825	3,948	2,302	169,909	205.95	43.04	+13.3	+12.7	+41.1	+43.7
Mass.....	2,047	10,641	6,720	3/ 786,748	3/$254.40	3/ 48.94	+4.9	3/ -20.1	+23.0	3/ +19.5
Mich.....	11,766	57,582	34,769	3,592,793	305.35	62.39	+6.1	+5.8	-48.5	+1.9
Minn.....	1,626	7,440	4,235	566,549	348.43	76.15	+11.0	+22.6	+171.7	+216.6
Mo.....	728	3,981	2,525	131,828	181.08	33.11	+3.1	+2.9	+134.6	+151.3
Nebr.....	198	1,053	661	41,088	207.52	39.02	+8.0	+9.4	+35.3	+43.0
N. Y.....	9,389	46,816	28,505	3,105,288	330.74	66.33	-1.9	-1.8	-49.9	-40.9
Ohio.....	10,549	52,587	31,203	2,200,693	202.85	41.85	+7.4	+7.5	+106.5	+110.9
Okla.....	382	2,074	1,220	77,220	202.30	37.26	+15.0	+13.5	+70.3	+78.0
Oreg.....	4,426	20,515	12,978	964,665	217.95	47.02	+24.5	+23.1	-26.4	-24.2
Pa.....	5,335	24,836	14,388	1,359,119	254.76	54.61	+8.0	-2.6	+49.7	+41.5
R. I.....	859	4,324	2,614	209,828	244.03	48.53	+.6	-1.7	+36.7	+72.4
Utah.....	1,994	9,728	5,869	463,960	232.37	47.59	-.4	-3.4	+16.5	+37.5
Vt.....	367	1,825	1,096	112,807	307.35	61.81	-2.6	-4.7	+31.9	+33.7
Wash.....	6,406	27,615	15,379	1,522,033	237.56	55.12	+24.0	+18.5	+28.0	+19.3
W. Va.....	2,694	14,264	9,498	405,165	150.40	28.40	+5.2	+8.2	-32.7	-26.0
Wis.....	1,191	4,797	3,867	458,301	(3/)	95.54	(5/)	(5/)	---	---

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision. Data include non-medical vendor payments other than those for institutional services in intermediate care facilities.

2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.

3/ Amount includes $2:5,000 representing grants for special needs for the quarter January-March 1972. The average payments and percentage changes exclude this amount. Including this amount the average payments, per family and per recipient would be, respectively: U. S. total, $257.09 and $53.80; and Massachusetts, $[illegible] and $73.94.

4/ Program in operation; no payments made in December.

5/ Program initiated October 1971.

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Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, January 1972 1/

/Excludes vendor payments for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		December 1971 in--		January 1971 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	138,057	656,059	303,727	$35,824,811	$259.49	$54.61	+0.9	+2.6	-16.2	-5.2
Calif.....	56,777	233,149	139,997	12,004,233	236.41	51.49	-1.5	+.2	-26.3	-16.2
Colo.....	2,315	10,979	6,363	588,837	254.36	53.63	+7.0	+6.9	+5.8	+4.0
Del.....	182	806	542	29,663	162.98	33.11	+12.3	+8.1	+34.5	+32.4
D. C.....	1,055	4,478	3,074	201,187	190.70	45.44	+4.6	+4.6	+438.7	+328.3
Hawaii.....	1,035	4,762	2,688	368,237	355.78	77.33	+7.3	+.5	+91.4	+106.1
Ill.....	18,760	94,576	57,681	5,338,042	284.85	56.44	+1.0	-1.3	+89.0	+78.3
Kans.....	758	3,755	2,253	177,934	234.74	47.39	+2.4	+4.1	-7.4	-16.4
Maine.....	214	661	473	25,501	223.69	38.58	-23.0	-23.0	-79.8	-80.4
Md.....	991	4,609	2,733	197,851	199.65	42.93	+16.7	+16.4	+25.7	+29.7
Mass.....	2,092	10,756	6,754	651,549	311.45	60.58	+1.1	-17.2	+21.7	+23.1
Mich.....	12,860	62,142	37,373	4,051,529	316.53	65.18	+8.0	+12.8	+63.2	+83.9
Minn.....	1,821	8,322	4,725	628,302	345.03	75.50	+11.9	+10.9	+144.5	+184.1
Nebr.....	201	1,081	692	42,069	209.20	38.90	+2.7	+2.3	+11.3	+21.6
N. Y.....	9,438	46,654	28,362	3,221,384	341.32	69.05	-.3	+3.7	-53.3	-44.1
Ohio.....	11,331	55,197	32,627	2,309,479	242.04	41.84	+4.0	+4.9	+204.2	+104.3
Okla.....	438	2,328	1,487	86,992	208.18	37.35	+12.2	+12.5	+70.3	+75.1
Oreg.....	4,920	22,427	13,071	1,108,568	225.32	49.43	+9.3	+14.9	-30.2	-21.7
Pa.....	4,112	19,246	11,140	1,136,042	276.27	59.03	-22.7	-16.4	+9.6	+13.4
R. I.....	917	4,450	2,496	216,874	236.50	48.74	+2.9	+3.4	+23.7	+34.3
Utah.....	2,166	10,487	6,293	496,566	229.39	47.38	+7.8	+7.3	+15.8	+42.9
Vt.....	418	2,040	1,209	128,472	307.35	62.98	+11.8	+13.9	+13.1	+18.0
Wash.....	7,039	29,988	16,635	1,700,706	241.61	56.69	+8.6	+11.7	+21.7	+16.9
W. Va.....	2,445	12,673	8,404	371,849	152.09	29.34	-11.2	-8.2	-41.7	-31.9
Wis.....	1,862	3/ 10,423	3/ 6,418	742,695	398.87	71.26	+56.9	+58.1	(4/)	(4/)

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Partly estimated by State
4/ Program initiated October 1971.

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Table 6.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, February 1972 1/

/Excludes vendor payments for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		January 1972 in--		February 1971 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	143,422	479,350	408,186	$39,002,783	$271.94	$57.41	+3.6	+8.9	-17.4	-2.3
Calif.....	53,146	244,116	146,861	14,611,729	274.94	59.86	+4.7	+21.7	-24.9	-1.2
Colo.....	2,456	11,551	6,652	620,651	252.71	53.73	+5.2	+5.4	+2.0	-.2
Del.....	148	720	436	25,499	172.29	35.42	-19.6	-14.0	-11.8	-9.5
D. C.....	1,135	4,742	3,298	215,840	190.17	45.52	+7.1	+7.3	+354.2	+265.5
Hawaii.....	1,061	4,929	2,801	391,502	368.99	79.53	+3.4	+6.3	+79.3	+109.0
Ill.....	19,065	96,313	58,774	5,332,069	279.68	55.36	+1.8	-.1	+65.2	+61.1
Kans.....	773	3,845	2,305	175,653	227.24	45.68	+2.4	-1.3	-21.0	-32.6
Maine.....	106	604	431	23,596	222.60	39.07	-8.6	-7.5	-85.5	-85.8
Md.....	1,010	4,702	2,778	204,775	202.75	43.55	+2.0	+3.5	+9.4	+12.7
Mass.....	2,153	10,976	6,871	664,719	308.74	60.56	+2.0	+2.0	+12.6	+11.5
Mich.....	13,419	64,399	38,920	4,293,200	319.93	66.15	+4.4	+6.0	+61.7	+79.2
Minn.....	1,871	8,422	4,934	657,648	351.60	76.30	+3.6	+4.7	+118.2	+145.8
Nebr.....	155	1,005	634	39,513	213.58	39.32	-7.0	-6.0	-10.3	-1.2
N. Y.....	9,314	46,144	28,142	3,008,673	323.03	65.20	-1.1	-6.6	-55.6	-49.4
Ohio.....	12,134	58,275	34,409	2,446,492	201.79	41.98	+5.6	+5.9	+88.2	+87.9
Okla.....	422	2,412	1,531	90,874	201.05	37.68	+3.6	+4.5	+50.9	+54.0
Oreg.....	2,107	23,118	13,515	1,103,918	216.16	47.75	+3.1	-.4	-27.4	-22.7
Pa.....	4,081	19,056	10,959	1,084,730	265.80	56.95	-1.0	-4.5	+5.1	-1.6
R. I.....	923	4,463	2,685	216,154	234.19	48.43	+.3	-.3	+16.1	+18.7
Utah.....	2,094	10,058	6,527	497,873	238.90	49.50	-4.1	+.2	+7.1	+31.4
Vt.....	307	2,423	1,425	156,179	338.05	64.19	+19.3	+21.6	+10.5	+16.7
Wash.....	7,551	32,494	17,863	1,957,296	259.20	60.99	+7.0	+15.1	+25.1	+29.0
W. Va.....	2,403	12,334	8,147	324,719	136.81	26.65	-2.7	-11.6	-44.4	-43.2
Wis.....	2,348	11,944	7,249	855,291	364.26	71.54	+21.9	+14.5	(3/)	(3/)

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Program initiated October 1971.

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Table 8.--Aid to families with dependent children, unemployed-parent segment: Recipients of money payments and amount of payments, by State, March 1972 1/

(Excludes vendor payments for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		February 1972 in--		March 1971 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	145,216	685,522	411,018	3/ $42,092,270	3/ $289.86	3/ $61.40	+0.9	3/ +7.9	-21.1	3/ +1.1
Calif.....	54,781	250,203	150,512	17,483,295	319.15	69.88	+2.5	+19.7	-27.0	+17.6
Colo.....	2,452	11,556	6,674	623,089	254.11	53.92	(4/)	+.4	+1.0	-.7
Del.....	177	853	510	29,057	164.16	34.06	+18.5	+14.0	+.9	-3.5
D. C.....	1,214	5,110	3,576	228,911	188.56	44.80	+7.8	+6.1	+301.7	+221.1
Hawaii.....	1,088	5,041	2,865	395,697	363.69	78.50	+2.4	+1.1	+76.8	+80.1
Ill.....	19,246	97,038	59,182	5,432,721	282.28	55.99	+.8	+1.9	+38.8	+35.3
Kans.....	714	3,625	2,173	165,166	231.32	45.56	-5.7	-6.0	-31.9	-42.0
Maine.....	92	531	383	20,528	223.24	38.68	-12.1	-13.0	-88.7	-89.1
Md.....	998	4,651	2,743	200,608	201.01	43.13	-1.1	-2.0	+11.3	+12.5
Mass.....	2,265	11,204	6,984	3/ 846,844	3/ 373.88	3/ 75.58	+2.1	3/ +27.4	+5.0	3/ +8.3
Mich.....	13,390	64,991	38,932	4,242,463	316.84	65.28	+.1	-1.2	+43.8	+55.3
Minn.....	1,958	8,916	5,060	665,431	339.85	74.63	+3.4	+1.2	+92.9	+113.5
Nebr.....	169	887	549	34,892	206.46	39.34	-11.7	-11.7	-24.4	-16.2
N. Y.....	9,030	44,320	26,901	3,008,390	333.16	67.88	-4.0	(5/)	-59.0	-51.3
Ohio.....	12,896	60,719	35,799	2,561,030	202.20	42.18	+4.2	+4.7	+70.7	+71.4
Okla.....	457	2,419	1,523	92,730	202.91	38.33	+.3	+2.3	+23.8	+28.2
Oreg	4,953	22,672	13,301	1,126,216	227.38	49.67	-1.8	+2.0	-22.5	-11.6
Pa.....	4,010	18,604	10,679	1,045,708	260.78	56.21	-2.3	-3.6	+2.9	-5.2
R. I.....	856	4,078	2,438	196,316	229.34	48.14	-8.6	-9.2	+1.1	+6.7
Utah.....	2,161	10,414	6,227	508,046	235.10	48.78	+3.5	+2.0	+15.4	+45.4
Vt	593	2,848	1,670	180,614	304.58	63.42	+17.1	+15.6	+14.7	+19.7
Wash.....	6,958	29,515	16,425	1,734,689	249.39	58.84	-8.9	-11.3	+17.6	+21.2
W. Va.....	2,271	11,754	7,750	298,046	131.24	25.36	-4.7	-9.3	-48.2	-48.7
Wis	2,717	13,573	8,162	969,732	356.91	71.45	+13.5	+13.4	(6/)	(6/)

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $260,000 representing grants for special needs for the quarter April-June 1972. The average payments and percentage changes are affected accordingly.
4/ Increase of less than 0.05 percent.
5/ Decrease of less than 0.05 percent.
6/ Program initiated October 1971.

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Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, April 1972 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		March 1972 in--		April 1971 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	139,380	659,926	396,104	$36,933,190	$264.98	$55.97	-3.7	-12.3	-23.4	-9.9
Calif.....	52,931	243,072	146,364	13,717,428	259.16	56.43	-2.9	-21.5	-26.4	-3.9
Colo.....	2,347	10,960	6,343	597,389	254.53	54.51	-5.2	-4.1	-4.3	-5.4
Del.....	166	799	474	28,270	170.30	35.38	-6.3	-2.7	-6.4	-10.4
D. C.....	1,284	5,358	3,769	238,800	186.05	44.59	+4.9	+4.4	+280.3	+226.1
Hawaii.....	1,142	5,311	3,027	397,952	348.50	74.94	+5.4	+.6	+77.7	+77.8
Ill.....	18,619	94,043	57,417	5,199,759	279.27	55.29	-3.1	-4.3	+24.9	+19.2
Kans.....	616	3,143	1,881	174,164	282.73	55.41	-13.3	+5.4	-35.8	-34.7
Maine.....	94	546	394	21,128	224.77	38.70	+2.8	+2.9	-88.6	-88.9
Md.....	868	4,113	2,413	178,814	206.01	43.48	-11.6	-10.9	+21.2	+23.7
Mass.....	2,411	11,864	7,391	689,544	286.00	58.12	+5.9	-18.6	+7.5	+6.1
Mich.....	12,154	59,178	25,262	3,821,148	314.39	64.57	-8.9	-9.9	+21.1	+34.1
Minn.....	1,694	8,635	4,918	659,026	347.95	76.32	-3.2	-1.0	+73.8	+87.4
Nebr.....	138	782	504	29,927	216.86	38.27	-11.8	-14.2	-36.3	-36.6
N. Y.....	8,482	41,661	35,262	2,910,715	343.16	69.87	-6.0	-3.2	-60.2	-51.0
Ohio.....	12,793	61,251	36,081	2,590,512	202.49	42.29	+.9	+1.1	+55.9	+54.8
Okla.....	404	2,126	1,333	80,707	199.77	37.96	-12.1	-13.0	-.2	+3.3
Oreg.....	4,355	19,840	11,649	952,625	218.74	48.02	-12.5	-15.4	-22.6	-14.9
Pa.....	3,944	18,316	10,545	970,958	246.19	52.95	-1.4	-7.1	+6.9	+.5
R. I.....	800	3,458	2,307	188,633	235.79	49.15	-5.9	-3.9	-4.3	+2.0
Utah.....	2,042	9,831	5,854	509,534	249.53	51.99	-5.9	+.3	+4.2	+16.0
Vt.....	626	3,012	1,765	192,288	306.19	63.84	+5.8	+6.5	+29.3	+36.9
Wash.....	6,290	27,066	15,011	1,580,466	251.30	58.40	-8.3	-9.0	+10.4	+19.2
W. Va.....	2,134	11,223	7,429	304,213	141.23	27.11	-4.5	+2.1	-49.8	-46.8
Wis.....	2,824	13,968	8,374	898,870	318.30	64.35	+2.9	-7.3	(3/)	(3/)

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Program initiated October 1971.

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Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, May 1972 1/

(Excludes vendor payments for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		April 1972 in--		May 1971 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	133,790	630,452	378,233	$34,206,400	$251.15	$55.40	-4.5	-5.5	-23.6	-11.4
Calif.....	50,479	259,999	138,604	12,505,256	247.73	54.37	-5.4	-8.8	-26.6	-9.4
Colo.....	2,261	10,525	6,137	574,034	253.89	54.48	-3.9	-3.9	-1.1	-2.8
Del.....	141	659	385	23,038	163.42	34.94	-17.5	-18.5	-15.8	-20.0	
D. C.....	1,294	5,383	3,869	237,279	183.37	44.08	+.5	-.7	+255.3	+206.1
Hawaii.....	1,151	5,358	3,072	423,911	368.30	79.12	+.9	+6.5	+68.0	+78.9
Ill.....	15,261	91,220	56,030	5,068,179	278.46	55.20	-2.4	-2.5	+21.4	+17.3
Kans.....	553	2,846	1,728	159,178	287.84	55.54	-8.8	-8.6	-30.3	-33.7
Maine.....	92	531	383	20,491	222.73	38.59	-2.7	-3.0	-80.7	-83.0
Md.....	816	3,876	2,282	166,240	203.73	42.89	-5.8	-7.0	+24.0	+28.0
Mass.....	2,343	11,551	7,166	685,567	292.60	59.35	-2.6	-.6	-1.2	+2.2
Mich.....	11,364	55,324	33,104	3,601,316	316.91	65.02	-6.4	-5.8	+15.7	+25.0
Minn.....	1,846	8,414	4,814	641,447	347.48	76.24	-2.6	-2.7	+74.7	+101.4
Nebr.....	131	747	482	28,279	215.87	37.86	-4.5	-5.5	-37.5	-40.2
N. Y.....	7,[illegible]	38,[illegible]3	23,643	2,630,674	332.32	67.73	-6.8	-9.6	-61.1	-52.8
Ohio.....	12,[illegible]	61,203	35,911	2,582,873	202.70	42.36	-.4	-.3	+48.8	+47.6
Okla.....	373	1,929	1,232	72,579	193.04	38.29	-9.3	-8.5	-7.3	-4.1
Oreg.....	3,[illegible]99	16,814	9,[illegible]12	[illegible]31,475	224.78	49.45	-15.3	-12.7	-21.2	-21.3
Pa.....	3,[illegible]40	17,[illegible]91	10,[illegible]95	1,041,254	269.75	58.10	-2.3	+7.2	-9.3	+10.2
R. I.....	781	3,[illegible]00	2,215	182,[illegible]76	234.28	49.59	-3.9	-3.0	-6.7	-4.4
Utah.....	2,020	9,733	5,837	500,121	247.58	51.38	-.7	-1.8	+11.5	+34.4
Vt.....	645	3,121	1,841	2,[illegible]8 1[illegible]3	307.26	63.50	+3.6	+3.1	+33.4	+40.9
Wash.....	5,[illegible]7[illegible]	24,[illegible]6	13,[illegible]74	1,[illegible]21,[illegible]32	246.34	59.32	-3.6	-6.[illegible]	+11.8	+21.3
W. Va.....	1,[illegible]28	10,[illegible]9	7,926	[illegible]71,[illegible]78	225.[illegible]	25.[illegible]	-6.9	-10.3	-[illegible].2	-[illegible].4
Wis. 3/.....	3,[illegible]00	15,369	9,183	1,[illegible]9,026	347.30	67.02	+9.9	+12.2	(4/)	(4/)

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Estimated by State.
4/ Program initiated October 1971.

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Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, June 1972 1/

/Excludes vendor payments for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		May 1972 in--		June 1971 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	127,194	595,650	357,369	3/$33,829,649	3/$265.97	3/ $56.79	-5.3	3/ -2.9	-25.0	3/-13.8
Calif.....	47,013	212,330	128,002	12,332,840	262.33	58.08	-7.7	-1.4	-27.9	-13.1
Colo.....	2,043	9,525	5,550	500,397	244.93	52.54	-9.6	-12.8	-6.7	-12.0
Del.....	127	596	349	20,720	163.15	34.77	-9.6	-10.0	-34.8	-32.4
D. C.....	1,929	6,146	4,399	261,740	135.69	42.59	+14.2	+10.3	+165.1	+145.0
Hawaii.....	1,112	5,183	2,981	394,140	354.44	76.04	-3.3	-7.0	+59.1	+54.8
Ill.....	17,308	87,501	53,500	4,710,851	272.18	53.84	-4.7	-7.1	+12.5	+10.7
Kans.....	516	2,647	1,579	146,506	283.93	55.35	-7.6	-8.0	-39.7	-37.2
Maine.....	87	498	359	19,193	220.61	38.54	-6.2	-6.3	-89.2	-89.5
Md.....	767	3,647	2,116	156,595	204.17	42.94	-5.9	-5.8	+17.4	+19.1
Mass.....	2,436	11,884	7,369	3/ 891,102	3/ 365.81	3/ 74.98	+2.9	3/+30.0	-4.7	3/ -2.1
Mich.....	11,189	54,497	32,537	3,574,868	319.49	65.60	-1.6	-.7	+17.7	+26.4
Minn.....	1,714	7,774	4,445	588,527	349.20	76.99	-7.6	-6.7	+62.3	+84.1
Nebr.....	101	553	382	22,596	223.72	38.76	-22.0	-20.1	-47.7	-49.1
N. Y.....	7,429	36,496	22,170	2,516,325	338.72	68.95	-6.0	-4.3	-61.7	-51.9
Ohio.....	12,342	59,010	34,763	2,504,701	202.94	42.45	-3.3	-3.1	+40.2	+39.1
Okla.....	317	1,661	1,047	62,329	196.62	37.52	-13.9	-15.6	-15.4	-14.2
Oreg.....	3,246	14,758	8,635	721,659	222.32	48.80	-12.0	-13.2	-11.9	+5.7
Pa.....	3,779	17,589	10,119	1,006,873	266.44	57.24	-1.9	-3.3	+7.8	+3.8
R. I.....	756	3,564	2,115	175,073	231.58	49.12	-3.4	-4.3	-8.1	-9.2
Utah.....	2,092	9,639	5,759	494,516	247.01	51.31	-1.0	-1.1	+8.9	+12.4
Vt.....	596	2,920	1,737	185,403	311.08	63.49	-6.4	-6.4	+32.5	+41.0
Wash.....	5,474	22,259	11,959	1,308,523	239.04	58.81	-9.1	-9.8	+5.6	+17.1
W. Va.....	1,879	9,970	6,595	263,514	140.24	26.43	-4.6	-2.9	-49.5	-46.9
Wis. 4/.....	3,032	14,953	8,902	960,919	316.93	64.26	+6.1	+3.9	(5/)	(5/)

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families which requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $297,000 representing grants for special needs in Massachusetts for the quarter July-September 1972. The average payments and percentage changes are affected accordingly.
4/ Estimated by State
5/ Program initiated October 1971.

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APPENDIX C

PER CENT OF UI CLAIMANTS ENTITLED TO MAXIMUM WEEKLY BENEFITS, JAN.-MAR. 1972

State	%	State	%
Alabama	43.5	Montana	62.1
Alaska	57.0	Nebraska	64.9
Arizona	INA.	Nevada	47.2
Arkansas	23.0	New Hampshire	22.2
California	34.5	New Jersey	43.2
Colorado	20.5	New Mexico	37.2
Connecticut	36.5	New York	43.9
Delaware	54.2	North Carolina	12.6
District of Columbia	26.8	North Dakota	65.5
Florida	49.7	Ohio	71.5
Georgia	50.2	Oklahoma	35.8
Guam	-	Oregon	51.3
Hawaii	37.5	Pennsylvania	32.8
Idaho	58.1	Puerto Rico	15.6
Illinois	45.9	Rhode Island	INA.
Indiana	71.5	South Carolina	27.7
Iowa	70.2	South Dakota	64.0
Kansas	58.1	Tennessee	37.5
Kentucky	52.5	Texas	47.8
Louisiana	61.2	Utah	34.9
Maine	45.3	Vermont	48.0
Maryland	41.1	Virginia	40.3
Massachusetts	47.4	Virgin Islands	-
Michigan	72.2	Washington	58.7
Minnesota	57.4	West Virginia	19.6
Mississippi	43.4	Wisconsin	42.6
Missouri	59.1	Wyoming	67.6
Total	45.4		

Source: U.S. Department of Labor, Manpower Administration.

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APPENDIX D

AVERAGE MONTHLY FAMILY PAYMENTS UNDER AFDC-UF AND NON-UF AFDC IN 24 STATES WITH AFDC-UF PROGRAMS, JUNE 1972

State	Average non-UF Family Payments	Average AFDC-UF Family Payments	Amount UF Segment Average Exceeds Regular AFDC
1. California	$204.99	$262.33	$ 57.34
2. Colorado	168.65	244.93	76.28
3. Delaware	118 86	163.15	44.29
4. District of Columbia	201.16	135.69	(-65.47)[a]
5. Hawaii	271.94	354.44	82.50
6. Illinois	223.57	272.18	48.61
7. Kansas	201.72	283.93	82.21
8. Maine	139.76	220.61	80.85
9. Maryland	156.30	204.17	47.87
10. Massachusetts	345.03	365.81	20.78
11. Michigan	231.28	319.49	88.21
12. Minnesota	232.27	349.20	116.93
13. Nebraska	148.47	223.72	75.25
14. New York	253.79	338.72	84.93
15. Ohio	155.66	202.94	47.28
16. Oklahoma	136.68	196.62	59.94
17. Oregon	159.47	222.32	62.85
18. Pennsylvania	231.62	266.44	34.82
19. Rhode Island	233.10	231.58	(-1.52)[a]
20. Utah	180.77	247.01	66.24
21. Vermont	225.81	311.08	85.27
22. Washington	202.88	239.04	36.16
23. West Virginia	109.96	140.24	30.28
24. Wisconsin	246.52	316.93	70.41
24 State Average	219.08	265.97	46.89

Source: USDHEW, National Center for Social Statistics, Public Assistance Statistics, June 1972 (NCSS Report A-2), 6/72, Tables 7 and 8.

[a]Regular AFDC average exceeds AFDC-UF average.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed December 11, 1972]

[Title Omitted in Printing]

MOTION TO INTERVENE

Now come Roger C. and Arlene M. Derosia, and Larry, Harold, Arthur, Mary and Brian Derosia, minor children of Roger and Arlene Derosia, by their attorney, Richard S. Kohn, Vermont Legal Aid, Inc. pursuant to Rule 24 (b) and (c), Federal Rules of Civil Procedure, to move this Honorable Court to permit them to intervene in the above case. In support of their motion herein, said parties stipulate and certify as follows:

1. That they reside in Swanton, Franklin County in the State of Vermont.

2. That their claims against the above defendants present questions of law and/or facts in common with the original plaintiffs' main action in that the intervenors are deprived of ANFC-UF because the father is receiving state unemployment compensation, which is much lower than the ANFC benefits. (Please see Intervenors' complaint which is attached hereto.)

3. That their intervention in the above cause will not unduly delay or prejudice the adjudication of the rights of the original parties.

Dated at St. Johnsbury in the County of Caledonia and State of Vermont this 11 day of December, 1972.

/s/ Richard S. Kohn
RICHARD S. KOHN
Vermont Legal Aid, Inc.
St. Johnsbury, Vermont 05819
56 Railroad Street
Attorney for Intervenors

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 24, 1973]

[Title Omitted in Printing]

STIPULATION

It is hereby stipulated and agreed by and between the undersigned attorneys for the respective parties hereto as follows:

1. Plaintiffs Jean Glodgett and Deanne Glodgett are citizens of the United States, residents of Orleans in the State of Vermont, and the parents of plaintiff Tina Glodgett, their minor child, who resides with them.

2. On December 17, 1971, Mr. Glodgett applied for ANFC at the Newport District Office of the Department of Social Welfare and his application was accepted. On December 20, 1971, the family received its first check in the amount of $93.00, covering the balance of December. Thereafter, the family received a monthly benefit of $239.00.

3. On January 10, 1972, Mr. Glodgett began receiving unemployment compensation from New Hampshire in the amount of $14.00 per week. On January 12, 1972, he was notified by letter that his ANFC benefits would be terminated beginning February 16, 1972, because he was receiving unemployment compensation.

4. Mr. Glodgett stopped receiving unemployment compensation in March, 1972. On April 5, 1972, a new ANFC grant was approved for the family. The family received a check for $223.00 for the balance of April and $239 beginning May 1. The grant was terminated on July 1 due to the fact that Mr. Glodgett had become employed. On April 21, 1972, the family again received an ANFC grant due to incapacity of Mr. Glodgett. The grant was discontinued on November 16, 1972, when Mr. Glodgett returned to work.

5. Plaintiffs Roger and Rosamond Percy are citizens of the United States and residents of Orleans in the State of Vermont. Plaintiffs Sheila, Charon, Roger, Mary, Matthew, and Sharon Percy are their minor children who reside with them.

6. Roger Percy was employed as a trucker by Orlando Construction Company until December 4, 1972, when he was laid off. He applied for ANFC-UF on December 6, 1972. On December 10, 1971, he began drawing unemployment compensation in the amount of $43.00 per week. His ANFC application was denied on December 20, 1971, for the sole reason that he was receiving unemployment compensation. If he was eligible for ANFC he would have drawn $410.00 per month for his family. His monthly unemployment compensation was approximately $172.00. On several occasions the family obtained General Assistance benefits to help them buy groceries. As of October 28, 1972, Mr. Percy was no longer eligible for unemployment compensation. As of November 6, 1972, his family has been receiving ANFC-UF.

7. Roger C. Derosia and Arlene M. Derosia are citizens of the United States and residents of Swanton in the State of Vermont. Larry, Harold, Arthur, Mary and Brian Derosia are their minor children and reside with them. Mr. Derosia was employed by O. C. McCuin in Highgate Center, Vermont, for three years. He terminated his employment on August 25, 1972. On September 8, 1972, he applied for ANFC-UF. The Department of Social Welfare put the family on General Assistance. On or about October 25, 1972, a decision was made to grant the family ANFC-UF retroactive to September 24, 1972. The grant was in the amount of $394.00 per month. On November 6, 1972, Mrs. Derosia notified the Department of Social Welfare that the family was getting unemployment compensation of $56.00 per week. For this reason, the ANFC-UF grant was terminated as of December 1, 1972.

Dated at St. Johnsburg, Vermont this 11 day of December, 1972.

/s/ Richard S. Kohn
RICHARD S. KOHN, ESQ.
56 Railroad Street
Vermont Legal Aid, Inc.
St. Johnsbury, Vermont 05819
Attorney for Plaintiffs

Dated at Montpelier, Vermont, this — day of December, 1972.

/s/ D. Eugene Wilson
EUGENE WILSON, ESQ.
Assistant Attorney General
8 State Street
Montpelier, Vermont 05602
Attorney for Defendant Betit

Dated at Rutland, Vermont, this — day of December, 1972.

/s/ Carter LaPrade
CARTER LAPRADE, ESQ.
Assistant U.S. Attorney
Federal Building
Rutland, Vermont 05701
Attorney for Defendant Richardson

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed March 2, 1973]

[Title Omitted in Printing]

ANSWER TO INTERROGATORIES

1. Bert N. Smith, I have a Bachelor of Arts degree from the University of Vermont in Burlington, a Master of Social Work degree from the University of Connecticut in Hartford, Connecticut, and am a member of the Academy of Certified Social Workers.
2. Approximately 15 years.
3. Director of the Aid to Needy Families with Children Program.
4. Since April 14, 1971.
5. I am directly responsible to the Commissioner of Social Welfare for all matters pertaining to the ANFC Program administration to include program planning, legislation, policies, procedure, evaluation, and budgeting.
6. Yes.
7. Yes.
8. No, since the family must first live upon the UCC benefits available each week in addition to having monthly income of $1.00 below the payment level under ANFC.
9. Not answered.
10. As indicated in answer #8, General Assistance is not automatic in such cases. In most instances the level of UCC benefits is less than the ANFC payment standards. It is quite likely if UCC benefits are exhausted and no money is available to meet an essential emergency need, some General Assistance might become available. However, even then the combination of both UCC and GA benefits would still not equal the level of payment under the ANFC Program.
11. Yes.

12. Sex discrimination is evidenced by the application of the Federally mandated law since a female may draw UCC and ANFC benefits concurrently while a man cannot.

13. Yes.

14. It is my personal opinion that on its face the Federal law is irrational when viewed from the knowledge of present day job markets. The only basis I can see for the law was that men are viewed by Congress and society as the principal bread winner in a family and thus it would appear that keeping compensation during a period of unemployment at a low level would cause them to seek work more actively and eagerly. This philosophy makes no sense at all when suitable jobs are not available. Further the Federal law mandates that a father be unemployed for 30 days before he be considered to meet the Federal definition and certainly after this period if he is not employed but receiving UCC benefits I can see nothing to be gained by having a family with minor children living on a standard which may be less than that recognized by the Welfare agency as necessary to sustain a level of decency and health.

15. No. Only the Commissioner of Social Welfare is so empowered. I can recommend on matters pertaining to Welfare policy.

16. Not answered.

17. Yes.

18. It is my opinion Congress should change the Federal law to remove the prohibition of concurrent receipt of UCC and ANFC benefits when the UCC benefits do not equal the state ANFC assistance level. My reasons for this position have been clarified by my answer to question # 14.

19. Yes.

20. It is my opinion that there is no evidence to indicate that the Federal law has had the effect of increasing the number of families on the ANFC Program because of a deserting father.

/s/ Bert N. Smith
BERT N. SMITH
ANFC Program Director for
the State of Vermont

AFFIDAVIT

I, Bert N. Smith, ANFC Program Director for the State of Vermont, being duly sworn according to law, depose and state the the answers to the aforesaid Interrogatories are correct to the best of my knowledge, information, and belief.

/s/ Bert N. Smith
BERT N. SMITH

Sworn to and subscribed before me this 1st day of Sept., 1972.

/s/ Samuel A. McLaughlin
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed March 5, 1973]

[Title Omitted in Printing]

COMPLAINT

I. This is a suit for a declaratory judgment that 42 U.S.C. § 607(b)(2)(c)(ii); 45 C.F.R. §§ 233.100(a)(5)(ii) and 233.100(c)(v)(b); and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments to the United States Constitution insofar as they render children of unemployed fathers ineligible to receive ANFC benefits during any week that the father is receiving unemployment compensation under state unemployment compensation law. The action against the Commissioner of Social Welfare is based on 42 U.S.C. § 1983. Plaintiffs also seek damages and injunctive relief against the Commissioner of the Vermont Department of Social Welfare and relief in the nature of mandamus as against the Secretary of the Department of Health, Education and Welfare.

II JURISDICTION

A. Jurisdiction against the Commissioner of the Vermont Department of Social Welfare is invoked pursuant to 28 U.S.C. § 1343(3)-(4) because it is brought to redress the deprivation under color of state law of a right secured by the fourteenth amendment; by 28 U.S.C. § 1331 because it arises under the Constitution and the amount in controversy exceeds $10,000; and by the doctrine of ancillary jurisdiction.

B. Jurisdiction against the defendant Secretary of the Department of Health, Education and Welfare is imparted by 28 U.S.C. § 1361, because plaintiffs request relief in the nature of mandamus and 28 U.S.C. § 1331 because it arises under the Constitution and the amount in controversy exceeds $10,000.

III PARTIES

A. Plaintiffs Roger and Arlene Derosia are citizens of the United States and the State of Vermont and residents of Swanton, Vermont. Plaintiffs Larry, Harold, Arthur, Mary and Brian Derosia are the minor children of Roger and Arlene Derosia and sue in their own behalf.

B. Defendant Richardson is the Secretary of the United States Department of Health, Education and Welfare. Pursuant to 42 U.S.C. § 602(b), he is authorized to approve state plans for the implementation of ANFC.

C. Defendant Betit is Commissioner of the Vermont Department of Social Welfare. Pursuant to 33 V.S.A. § 2505, he is the chief administrator and executive officer. Through his agents, the plaintiffs and the class they represent have been denied ANFC benefits.

D. Plaintiff Roger Derosia was employed by the O.C. McCuin Company of Highgate Center, Vermont, for three years. His employment was terminated on August 25, 1972. On October 25, 1972, an application was made for ANFC-UF. The application was granted retroactive to September 24, 1972. The amount of the ANFC-UF grant was $394.

On November 6, 1972, Mrs. Derosia notified the Welfare Department that they had begun receiving state unemployment compensation in the amount of $56 per week. Pursuant to 42 U.S.C. § 607(b)(2)(c)(ii) and F.S.P.M. 2331.31(3), the ANFC-UF grant was terminated effective December 1, 1972. The difference in income to the family is $153.20 per month.

IV STATEMENT OF CLAIM

A. The Social Security Act (42 U.S.C. §§ 606 and 607) provides for assistance to needy families with dependent children if the children have been deprived of parental support or care due to death, abandonment, physical or mental incapacity or unemployment of a parent.

B. Section 607(b)(2)(c)(ii) of the Social Security Act provides that assistance under the aid to families

with dependent children program for unemployed parents cannot be granted if the father is receiving unemployment compensation. Aid must be denied for any week in which the father received unemployment compensation regardless of the amount and of the unmet need of the family. Section 2331.31(3) of the Vermont Welfare Manual implements this requirement for Vermont.

The needs of the plaintiffs for a minimum subsistence compatible with health and decency are computed by the Department of Social Welfare and appear in the Vermont Welfare Manual at Section 2211.2. The amount received by the plaintiffs under the unemployment compensation program is considerably less than the amount the Department has adopted as the minimum necessary for a decent and healthful subsistence.

42 U.S.C. § 607(b)(2)(c)(ii), 45 C.F.R. §§ 233.100(a)(5)(ii) and 233.100(c)(v)(b), and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments for the following reasons:

1. Section 607 creates two classes of children whose fathers are unemployed, those whose fathers are receiving state unemployment compensation and those who are not. Needy children are excluded solely because their fathers receive unemployment compensation benefits even though such benefits may be far below what would otherwise be received under public assistance. Plaintiffs would be eligible for assistance if they were receiving amounts equal to their unemployment benefits in any other form of income or benefits. Having eligibility turn on the source of the income rather than the amount constitutes an invidious discrimination against the former group of children.

2. 42 U.S.C. § 606 provides ANFC eligibility for children who are deprived of parental support or care due to continued absence of one parent from the home. Eligibility under section 606 does not depend upon whether the parent in the home is receiving unemployment or not. Thus, the same children who are ineligible under section 607 because the father is receiving unemployment would

be eligible for ANFC under section 606 if either parent deserted the family. The statutory scheme which penalizes children because their parents are not separated is arbitrary and invalid under the ninth, fifth and fourteenth amendments.

Subparagraphs 1 and 2 above are equally applicable to 45 C.F.R. §§ 233.100(a)(5)(ii) and 233.100(c)(v)(b) and to Vermont Welfare Regulation 2331.31(3).

V. CLASS ACTION

Plaintiff's represent the class of those families residing in the State of Vermont who are eligible for the ANFC-UF program but for their fathers' receipt of or eligibility for unemployment compensation and as a result of this exclusion from ANFC are receiving assistance insufficient to meet their needs. Plaintiffs sue on behalf of themselves and all others similarly situated, pursuant to Rule 23, F.R.C.P.:

(a) The members of this class are so numerous that joinder of them all is impracticable.

(b) There are questions of law and fact common to all members of the class, and the common questions of law and fact predominate over any questions effecting only individual members of the class.

(c) The claims of the representative plaintiffs will fairly and adequately protect the interests of the class.

(d) Defendants have acted or refused to act on grounds generally applicable to the class.

(e) An adjudication of the rights of the named representatives of the class would, as a practical matter, be dispositive of the interests of all other members.

VI. THREE JUDGE COURT

The plaintiffs request that this action be heard by a three judge district court pursuant to 28 U.S.C. §§ 2281 and 2282 because plaintiffs seek a permanent injunction against the enforcement of an act of Congress and the

regulations of statewide applicability on the ground that they are repugnant to the Constitution.

VII. PRAYER FOR RELIEF

Wherefore, the plaintiffs respectfully pray that:

1. This court assume jurisdiction of this cause and convene a three judge court pursuant to Title 28, U.S.C. §§ 2281, 2282 and 2284;

2. This court issue an order declaring that this is an appropriate class action and granting plaintiffs leave to proceed with this action as a class action;

3. The court declare 42 U.S.C. § 607(b)(2)(c)(ii) and 45 C.F.R. §§ 233.100(a)(5)(ii) and 233.100(c)(v)(b) in violation of the due process clause of the fifth amendment and enjoin its enforcement as to plaintiffs and the class they represent;

4. The court declare Vermont Welfare Regulations 2331.31(3) in violation of the equal protection clause of the fourteenth amendment and enjoin its enforcement as to the plaintiffs and the class they represent;

5. That the Vermont Commissioner of Social Welfare be enjoined to pay retroactive benefits to the plaintiffs and the class they represent in the same amount that they would have been paid under 42 U.S.C. § 606;

6. That a writ in the nature of mandamus issue against the secretary of the Department of Health, Education and Welfare ordering him to approve the Vermont ANFC-UF plan without requiring it to contain a provision based on 42 U.S.C. § 607(b)(2)(c)(ii);

7. Grant such further relief as the court may deem just and appropriate.

ROGER C. DEROSIA; ARLENE M. DEROSIA

LARRY DEROSIA, HAROLD DEROSIA, ARTHUR DEROSIA, MARY DEROSIA, BRIAN DEROSIA

By /s/ Richard S. Kohn
Richard S. Kohn
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont 05819
Attorney for Plaintiffs

Dec. 11, 1972.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CHAMBERS OF

JAMES L. OAKES
Circuit Judge
Brattleboro, Vermont 03301

March 6, 1973

Richard S. Kohn, Esq.
Vermont Legal Aid, Inc.
St. Johnsbury, Vermont 05819
Benson Scott, Esq.
Assistant Attorney General
Montpelier, Vermont 05602
William Gray, Esq.
Assistant United States Attorney
Rutland, Vermont 05701

Re Glodgett v. Betit, Civil No. 6550

Gentlemen:

In your respective exchange of briefs, would you please tell us (1) if a husband is working but his earnings are

less than the amount he (and his family) would be entitled to under the ANFC or AFDC programs, would the difference between his wages and the amount of family need be paid under present welfare statutes and regulations; and (2) if the answer to the first question is in the affirmative, how does the Government rationalize such treatment of a family with a working father with the treatment of a family with an unemployed father who presumably is receiving only half of his weekly wages as unemployment compensation; and (3) if the answer to the first question is in the negative, on what basis is such payment not made?

We assume that Mr. Gray will communicate this request to Mr. LaPrade, and that Mr. Kohn will similarly communicate it to Ms. Kaufman.

Very truly yours,

/s/ James L. Oakes
James L. Oakes
U.S. Circuit Judge

cc Hon. James S. Holden
Hon. Albert W. Coffrin
Hon. Edward J. Trudell

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed March 16, 1973]

[Title Omitted in Printing]

MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT

Plaintiff moves the court for leave to file an amended complaint, a copy of which is hereto attached as Exhibit A on the ground that the issue raised by the amended pleading may permit the court to avoid decision of a constitutional question.

/s/ Richard S. Kohn
Richard S. Kohn
Attorney for Plaintiffs
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vermont

March 13, 1973

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed April 19, 1973]

[Title Omitted in Printing]

ORDER

Upon consideration of motion to file amended complaint of the above named plaintiff intervenors, filed March 16, 1973, it is hereby ORDERED:

Motion granted.

Dated this 2nd day of April, 1973.

/s/ James L. Oakes
James L. Oakes
United States Circuit Judge

/s/ James S. Holden
James S. Holden
Chief United States District Judge

/s/ Albert W. Coffrin
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed October 3, 1973]

[Title Omitted in Printing]

MOTION TO INTERVENE

Now come Robert and Tiana Spicer, and Samantha and Stephanie Perry, minor children of Tiana Spicer, by their attorneys, Kathleen M. Mitchell and Vermont Legal Aid, Inc., pursuant to Rule 24(b) and (c), Federal Rules of Civil Procedure, to move this Honorable Court to permit them to intervene in the above case. In support of their motion herein, said parties stipulate and certify as follows:

1. That they reside in Springfield, Windsor County in the State of Vermont.

2 That their claims against the above defendants present questions of law and/or facts in common with the original plaintiffs' main action in that the intervenors are deprived of ANFC-UF because the father is receiving state unemployment compensation, which is much lower than the ANFC benefits. (Please see Intervenor's complaint which is attached hereto.)

3. That their intervention in the above cause will not unduly delay or prejudice the adjudication of the rights of the original parties.

Dated at Springfield in the County of Windsor and State of Vermont this 28th day of September, 1973.

/s/ Kathleen M. Mitchell
Kathleen M. Mitchell
Vermont Legal Aid, Inc.
15 South Street
Springfield, Vermont 05156
Attorney for Intervenors

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed November 6, 1973]

[Title Omitted in Printing]

MOTION FOR RE HEARING ON DISMISSAL
OF THE CLASS ACTION

Plaintiffs move the court for a re-hearing on the question of the dismissal of the class aspect of the above captioned case for the reasons (1) that the court should not have dismissed plaintiffs' request for designation of their action as a class suit without a hearing, and (2) that under F.R.Civ.P. 56(d) the court should have denied summary judgment on the question of class relief and set that issue for trial. Plaintiffs seek a modification of the court's opinion to enable them to present evidence on the scope of the class and for the purpose of determining what shall constitute notice to the members of the class pursuant to F.R.Civ.P. 23(c).
Dated: November 4, 1973

/s/ Richard S. Kohn
Richard S. Kohn
Vermont Legal Aid, Inc.
56 Railroad Street
St. Johnsbury, Vt.
Attorney for the plaintiffs

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

[Filed December 17, 1973]

[Title Omitted in Printing]

MOTION FOR NEW TRIAL

Defendant moves the court to set aside the findings of fact and conclusions of law entered herein on the twenty-third day of October, 1973; and to grant defendant a new trail under F.R. Civ. P. 59(a) on the grounds that the Court erred in:

(1) Ruling that they could not find anything in the legislative history to prohibit giving an individual the option of UCC or ANFC-UF;

(2) Affording an individual an option, by the interpretation that 42 USC 605 provides for the protection and similar treatment to those individuals who receive outside income; and

(3) Not allowing counsel the opportunity to brief the option position.

Defendant seeks a new trial to enable them to show how the opinion of the twenty-third day of October, 1973, will cause irreparable financial harm to the defendant.

/s/ David L. Kalib
DAVID L. KALIB
Assistant Attorney General
State of Vermont
State Office Building
Montpelier, Vermont
Attorney for the Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed January 18, 1974]

[Title Omitted in Printing]

MOTION TO INTERVENE AND FOR TEMPORARY RELIEF

Now come Tina, William and Sean Sarazin, minor children of Mary and William Sarazin, by their attorneys, Mary Just Skinner and Vermont Legal Aid, Inc., pursuant to Rule 24(b) and (c), Federal Rules of Civil Procedure, to move this Honorable Court to permit them to intervene in the above case. In support of their motion herein, said parties stipulate and certify as follows:

1. That they reside in Barre, Washington County in the State of Vermont.
2. That their claims against the above defendants present questions of law and/or facts in common with the original plaintiffs' main action in that the intervenors are deprived of ANFC-UF because the father is receiving state unemployment compensation, which is much lower than the ANFC benefits.
3. That their intervention in the above cause will not unduly delay or prejudice the adjudication of the rights of the original parties.

And now comes Tina, William and Sean Sarazin, minor children of Mary and William Sarazin, by their attorneys, Mary Just Skinner and Vermont Legal Aid, Inc., pursuant to Rule 65, Federal Rules of Civil Procedure, to move this Honorable Court to permit them to intervene in the above case. In support of their motion herein, said parties stipulate and certify as follows:

1. That they will suffer immediate and irreparable injury if they are not granted a temporary restraining order in that they will not have sufficient income to support themselves and their family.

2. That they will suffer irreparable injury if they are not granted a temporary restraining order in that their monthly income will be approximately half of the standard of need set by the Vermont Department of Social Welfare to meet a family's minimum needs.

3. No undue delay or hardship will result to the defendants in that this Court has already held that an individual eligible for both state unemployment compensation benefits and an Aid to Families with Needy Children-Unemployed Father grant (ANFC-UF) has the option to choose receipt of benefits from the program that yields more income.

4. Justice and equity require the granting of this motion.

5. There is a likelihood that they will prevail on the merits.

6. Such other grounds as may appear on oral argument.

Dated this 16th day of January, 1974 in Montpelier, Vermont.

/s/ Mary Just Skinner
Mary Just Skinner, Esq.
Vermont Legal Aid, Inc.
26 State Street
Montpelier, Vermont 05602

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed January 18, 1974]

[Title Omitted in Printing]

AFFIDAVIT

William Sarazin, being duly sworn, deposes and states:

1. He resides at 9 Bugbee Avenue, Barre, Vermont with his wife Mary and three minor children, William, Jr., 11 years, Tina, Ten years, and Sean, 9 months.

2. On December 7, 1973, he was laid off his job as window cleaner at Stanley E. Leszko, Window Cleaner, RFD #3, Barre, Vermont. Prior to being laid off, he earned $67.80 net per week. At that time he had only himself, his wife and his son Sean to support.

3. On or about December 26, 1973, he applied for an ANFC-UF grant at the Barre District office of the Vermont Department of Social Welfare. At that time he was told that he was eligible as of January 10, 1974 for ANFC-UF benefits in the amount of $332.00 per month.

4. On January 10, 1974, he returned to the Barre District office and was told that he would not receive ANFC-UF benefits because he had received on that date a state unemployment compensation check in the amount of $40.00.

5. If he continues to receive only $40 per week from state unemployment compensation benefits his total income per month will be $160.00 from unemployment compensation plus approximately $60.00 per month part-time work from his former employer.

6. At the present time his expenses are approximately as follows:

rent—$65 per month
food—$35 per week ($150 a month)
car payments—$10 per week ($242 owed)
hospital bill—$10 per month
doctor's bill—$10 per month ($200 owed)

7. He planned to move to a larger apartment in early January, 1974 to accommodate his family. He has been forced to move in with his mother and her grandchild and to share expenses with her because he could not afford his own apartment. He had already contracted to take an apartment at Highgate Apartments in Barre, Vermont but when he found out he would not get an ANFC-UF grant he could not afford to make the move.

8. He bought a used car for $250.00 to get to work. It broke down and had to be towed to a repair shop. He has to pay $70.00 in repair and towing charges before he can get the car back. Without this car he has no regular way to get to his part-time work at various locations.

9. At the present time he is unable to support his family on $160.00 a month from unemployment compensation and from his part-time work. He cannot feed his family and pay his rent and make payments on his debts. Without his car he may not be able to continue his part time work.

10. He and his family will suffer irreparable damage because they don't have sufficient money to live on. He would be better able to meet the needs of himself and his family on the $332.00 per month ANFC-UF benefits.

Dated this 17th day of January, 1974 in Montpelier, Vermont.

/s/ William Sarazin
William Sarazin

Subscribed and Sworn to before me this 17th day of January, 1974

/s/ Anne Cheoldi
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed January 23, 1974]

[Title Omitted in Printing]

AMENDED COMPLAINT OF INTERVENTION

I. This is a suit for a declaratory judgment that 42 U.S.C. Section 607(b)(2)(c)(ii); 45 C.F.R. Sections 223.100(a)(5)(ii) and 233.100(c)(v)(b); and Vermont Welfare Regulation 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments to the United States Constitution insofar as they render children of unemployed fathers ineligible to receive ANFC benefits during any week that the father is receiving unemployment compensation under state unemployment compensation law. The action against the Commissioner of Social Welfare is based on 42 U.S.C. Section 1983. Plaintiffs also seek damages and injunctive relief against the Commissioner of Vermont Department of Social Welfare and relief in the nature of mandamus as against the Secretary of the Department of Health, Education and Welfare.

II. JURISDICTION

A. Jurisdiction against the Commissioner of the Vermont Department of Social Welfare is invoked pursuant to 28 U.S.C. Section 1343(3)-(4) because it is brought to redress the deprivation under color of state law of a right secured by the fourteenth amendment; by 28 U.S.C. Section 1331 because it arises under the Constitution and the amount in controversy exceeds $10,000; and by the doctrine of ancillary jurisdiction.

B. Jurisdiction against the Defendant Secretary of the Department of Health, Education and Welfare is imparted by 28 U.S.C. Section 1361, because plaintiffs request relief in the nature of mandamus and 28 U.S.C.

Section 1331 because it arises under the Constitution and the amount in controversy exceeds $10,000.

III. PARTIES

A. Plaintiffs Mary and William Sarazin are citizens of the United States and the State of Vermont and residents of Barre, Vermont. Plaintiffs William Jr., Tina and Sean are the minor children of William and Mary Sarazin and sue in their own behalf.

B. Defendant Weinberger is the Secretary of the United States Department of Health, Education and Welfare. Pursuant to 42 U.S.C. Section 602(b), he is authorized to approve state plans for the implementation of ANFC.

C. Defendant Philbrook is Commissioner of the Vermont Department of Social Welfare. Pursuant to 33 V.S.A. Section 2505, he is the chief administrator and executive officer. Through his agents, the plaintiffs and the class they represent have been denied ANFC benefits.

D. Plaintiff William Sarazin became unemployed on or about December 7, 1973. On or about December 26, 1973, the application was made for ANFC-UF. He was told that as of January 10, 1974, he would be eligible for ANFC-UF in the amount of $332.00 per month for his family of five.

E. On January 10, 1974, Mr. Sarazin went back to the welfare office where he was told he was not eligible for the ANFC-UF program because he had drawn a state unemployment compensation check in the amount of $40.00. He never received a written notice that he was not eligible for ANFC-UF grant. The difference in income to the family is $172.00 per month.

F. Mr. Sarazin stands ready to forego his state unemployment compensation check in the amount of $40.00 per week ($160.00) per month) to receive $332.00 per month from the Welfare Department.

IV. STATEMENT OF CLAIM

A. The Social Security Act (42 U.S.C. Sections 606 and 607) provides for assistance to needy families with dependent children if the children have been deprived of parental support or care due to death, abandonment, physical and mental incapacity or unemployment of parent.

B. Section 607(b)(2)(c)(ii) of the Social Security Act provides that assistance under the aid to families with dependent children program for unemployed parents cannot be granted if the father is receiving unemployment compensation. Aid must be denied for any week in which the father receives unemployment compensation regardless of the amount and of the unmet need of the family. Section 2331.31(3) of the Vermont Welfare Manual implements this requirement for Vermont.

The needs of the plaintiffs for a minimum subsistence compatible with health and decency are computed by the Department of Social Welfare and appear in the Vermont Welfare Manual at Section 2211.2. The amount received for the plaintiffs under the unemployment compensation program is considerably less than the amounts the Department has adopted as the minimum necessary for a decent and healthful subsistence.

42 U.S.C. Section 607(b)(2)(c)(ii), 45 C.F.R. Section 233.100(a)(5)(ii) and Vermont Welfare Regulations 2331.31(3) violate the due process and equal protection clauses of the fifth and fourteenth amendments for the following reasons:

A. Section 607 creates two classes of children whose fathers are unemployed: those whose fathers were receiving state unemployment compensation and those who are not. Needy children are excluded solely because their fathers receive unemployment compensation even though such benefits may be far below what would otherwise be received under public assistance. Plaintiffs would be eligible for assistance if they were receiving amounts equal to their unemployment benefits in any other form of income or benefits. Disqualifying families from ANFC-UF

because the father receives unemployment compensation constitutes an invidious discrimination.

B. 42 U.S.C. Section 607(b)(2)(c)(ii) is unconstitutional because it only disqualifies those children whose fathers are receiving unemployment compensation. This is an arbitrary distinction conditioned solely on which parent is receiving unemployment.

C. 42 U.S.C. Section 606 provides ANFC eligibility for children who are deprived of parental support or care due to continued absence of one parent from the home. Eligibility under section 606 does not depend upon whether the parent in the home is receiving unemployment or not. Thus, the same children who are ineligible under Section 607 because the father is receiving unemployment compensation would be eligible for ANFC under Section 606 if either parent deserted the family. A statutory scheme which penalizes children because their parents are not separated is arbitrary and invalid under the ninth, fifth and fourteenth amendments.

Subparagraphs A, B and C above are equally applicable to 45 C.F.R. Section 233.100 and Vermont Welfare Regulation, 233.31(3).

D. Vermont Welfare Regulation 2331.31(3), as applied, violates 42 U.S.C. Section 607(b)(2)(c)(ii) and 45 C.F.R. Section 233.100(a)(5)(ii) because it is interpreted to disqualify families in which the father is eligible to receive unemployment compensation as well as those in which the father is actually receiving unemployment compensation.

V. PRAYER FOR RELIEF

Wherefore, the plaintiffs respectfully pray that:

1. This Court allow plaintiffs to intervene in this cause;

2. The Court declare 42 U.S.C. Section 607(b)(2)(c)(ii) and 45 C.F.R. Section 223.100(a)(5)(ii) and 233.100(c)(v)(b) in violation of the due process clause of the fifth amendment and enjoin its enforcement as to plaintiffs;

3. The Court declare Vermont Welfare Regulation 2331.31(3) in violation of the equal protection clause of the fourteenth amendment and enjoin its enforcement as to the plaintiffs;

4. That the Vermont Commissioner of Social Welfare be enjoined to pay retroactive benefits to the plaintiffs in the same amount that they would have been paid under 42 U.S.C. Section 606;

5. That a writ in the nature of mandamus issue against the Secretary of the Department of Health, Education and Welfare ordering him to approve the Vermont ANFC-UF plan without requiring it to contain a provision based on 42 U.S.C. Section 607(b)(2)(c)(ii);

6. That the Court interpret 42 U.S.C. Section 607(b)(2)(c)(ii) to disqualify families from ANFC-UF benefits only for any week in which the father is actually receiving unemployment compensation.

7. Grant such further relief as the court may deem just and appropriate.

WILLIAM SARAZIN, MARY SARAZIN

By: /s/ Mary Just Skinner

Mary Just Skinner, Esquire
Vermont Legal Aid, Inc.
26 State Street
Montpelier, Vermont 05602

VERIFICATION

We solemnly swear that We have read the above Complaint and know the contents thereof, and that the same is true to the best of our knowledge, except the matters stated on my information and belief, and that as to those matters We believe them to be true.

/s/ William Sarazin
William Sarazin

/s/ Mary Sarazin
Mary Sarazin

Subscribed and Sworn to before me this 16th day of January, 1974,

/s/ Mary Just Skinner
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed January 25, 1974]

[Title Omitted in Printing]

STIPULATION

Plaintiff-intervenors Mary and William Sarazin, individually and on behalf of their minor children Tina, William, Jr. and Sean, by and through their attorney Mary Just Skinner, Esquire and Vermont Legal Aid, Inc., and defendant Paul Philbrook (originally Joseph Betit) by and through his attorney David Kalib, Esquire, hereby agree and stipulate as follows:

1. Plaintiff-intervenor shall forego receipt of further state unemployment compensation benefits after January 24, 1974.

2. Defendant shall grant plaintiff ANFC-UF benefits as of January 28, 1974 until plaintiff ceases to be eligible for such benefits.

3. Defendant waives the requirement of posting the bond of fifty dollars ($50) set by the Court on January 23, 1974.

4. Upon the Court's entry of a final judgment in the case at bar plaintiff-intervenor shall become a member of the class covered by this Court's Orders of October 17, 1973 and December 28, 1973, and shall be subject to any further order of the Court staying the effect of such final judgment. In no event shall the merger of plaintiff-intervenor into the class covered by the Court's final judgment cause any hiatus in the receipt of ANFC-UF benefits to plaintiff-intervenor so long as he remains eligible for such benefits.

Dated at Montpelier, Vermont this 24th day of January, 1974.

/s/ David Kalib
David Kalib, Esquire
for Defendant Paul Philbrook

/s/ Mary Just Skinner
Mary Just Skinner, Esquire
for plaintiff-intervenors,
William and Mary Sarazin,
individually and on behalf
of their minor children,
Tina, William, Jr. and
Sean Sarazin

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

[Filed January 25, 1974]

[Title Omitted in Printing]

ORDER

Plaintiffs having moved this Court pursuant to Rules 24(b) and (c), and 65, Federal Rules of Civil Procedure, for a leave to intervene in the case at bar and for a temporary restraining order restraining Paul Philbrook (originally Joseph Betit) and Elliot Richardson from refusing to grant Plaintiff Aid to Families with Needy Children-Unemployed Father benefits (ANFC-UF) solely on the ground that he is receiving unemployment compensation benefits from the State of Vermont. This motion having been considered by this Court:

Upon the verified complaint, affidavit, and memorandum submitted on behalf of the parties, upon hearing on January 24, 1974, upon the finding by this Court that:

1) Plaintiffs' claims against the defendants present questions of law and fact in common with the original plaintiffs main action;
2) Plaintiffs' intervention will not unduly delay the case at bar;
3) Plaintiffs are now suffering irreparable damage by being denied ANFC-UF benefits; and
4) Plaintiffs are likely to prevail on the merits in the case at bar, and upon stipulation of the parties that plaintiff-intervenor William Sarazin shall forego receipt of further state unemployment compensation benefits after January 24, 1974, that defendant Vermont Department of Social Welfare shall grant plaintiffs ANFC-UF benefits as of January 28, 1974 until plaintiffs cease to be eligible for such benefits; that defendant Department of Social Welfare waives the requirement of posting the bond of fifty dollars ($50) set on January 23, 1974,

and that entry of a final judgment order in the case at bar shall result in plaintiff-intervenors merger into the class of persons covered by the Orders of October 17, 1973 and December 28, 1973, whereupon plaintiff-intervenors shall be subject to any further order of the court staying the effect of such final judgment, it is

ORDERED, ADJUDGED AND DECREED THAT:

Plaintiff-intervenors William and Mary Sarazin, individually and on behalf of their minor children Tina, William, Jr. and Sean Sarazin are hereby intervened as party-plaintiffs in the instant case and defendants, their successors in office, agents, and employees, and all other persons in active concert with them, are hereby restrained from refusing to grant Plaintiff ANFC-UF benefits as of January 28, 1974 for so long as Plaintiff remains eligible and foregoes receipt of Vermont unemployment compensation benefits.

Dated at Rutland, Vermont this 25th day of January, 1974.

/s/ James S. Holden
Judge James S. Holden
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 26, 1974]

[Title Omitted in Printing]

MOTION TO STAY, INCLUDING SUPERSEDEAS IN DISTRICT COURT

Defendants move this Court to stay the enforcement of its judgment in this action pending the disposition of defendants' appeal to the United States Supreme Court.

/s/ David L. Kalib
DAVID L. KALIB
Assistant Attorney General
Office of the Attorney General
Montpelier, Vermont 05602
(802) 828-3445

Attorney for Appellants/Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 26, 1974]

[Title Omitted in Printing]

AFFIDAVIT

ROBERT M. SALIBA, being duly sworn and deposed, says:

1. For the last 4½ years, I have been involved in systems and programming with the computer operations for the Vermont Department of Employment Security, a position I currently maintain. Prior to that time, I have had programming experience with the Vermont Highway Department and I have attended courses of instruction in programming with the International Business Machine Corporation.

2. At the request of the Commissioner for the Department of Social Welfare, I have prepared a study on the average weekly claim load of the Department of Employment Security. The purpose of this study is to determine the number of individuals potentially eligible, concurrently, for both unemployment insurance and Aid to Needy Families—Unemployed Father benefits. The information for this study came from Departmental weekly reports which are submitted by local offices from their claims files.

3. The findings of the study are as follows:

a. During the calendar year 1973, the total number of claims filed was 268,270, or an average weekly total of 5159.

b. In order to determine the number of individuals potentially eligible concurrently for both ANFC-UF welfare and unemployment benefits, I had our computer sort into two categories the first 5200 claimants [rounding 5159—the average number of claimants at any given period] who have received at least one payment and who have entered the file subsequent to

June 30, 1973, the date dependency information was entered on the files. The first category of the 5200 is made up of those individuals presumably ineligible for ANFC-UF (i.e. anyone with no dependents, or one dependent, [who is presumed to be a spouse], or any female claimant). The second category is made up of those who are potentially eligible for ANFC-UF benefits, namely those families headed by males with two or more dependents.

c. It was found on two separate computer runs, (January 25, 1974 and January 31, 1974) that of the first fifty-two hundred (5200) names, as calculated in *a.* above, approximately fifteen hundred (1500) [In actuality the January 25 run revealed 1496 potentially eligible, while the January 31 run showed 1480 potential eligibles] would fall into the potentially eligible group.

The attached results accurately reflect the content of our file on January 25 and January 31, 1974.

/s/ Robert M. Saliba
ROBERT M. SALIBA

Subscribed and Sworn to before me this 15th day of February, 1974.

/s/ David Kalib
Notary Public

REQUEST REPORT FOR UI DIRECTOR

01/25/74

CLAIMANT SAMPLE SIZE 5200

NO. OF FEMALES	= 1580	
NO. OF MALES 0 DEPS	= 1409	
NO. OF MALES 1 DEPS	= 715	
NO. OF MALES 2 DEPS	= 473	AVE WBA = 72
NO. OF MALES 3 DEPS	= 428	AVE WBA = 74
NO. OF MALES 4 DEPS	= 331	AVE WBA = 74
NO. OF MALES 5 DEPS	= 264	AVE WBA = 74

REQUEST REPORT FOR UI DIRECTOR

01/31/74

CLAIMANT SAMPLE SIZE 5200

No. of Females	= 1584	
No. of Males 0 Deps	= 1427	
No. of Males 1 Deps	= 709	
No. of Males 2 Deps	= 450	Ave WBA = 72
No. of Males 3 Deps	= 429	Ave WBA = 74
No. of Males 4 Deps	= 324	Ave WBA = 74
No. of Males 5 Deps	= 277	Ave WBA = 74

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 26, 1974]

[Title Omitted in Printing]

AFFIDAVIT

LAWRENCE MASTERSON, being duly sworn, deposes and says:

1. I am Agency Principal Accountant, responsible for financial reports and projects of the Department of Social Welfare.

2. I, as Principal Accountant, have had the responsibility for preparing and working with the Department of Social Welfare's budget since 1969.

3. From time to time, I have been requested, and as part of my normal responsibilities I have provided, information to various individuals with respect to the Department's budget.

4. In the normal course of my employment responsibilities, I have prepared an analysis of the Department's budget expenditure and projected expenditures for both the first half of fiscal year 1974 and the entire fiscal year 1974, respectively.

5. The results of this analysis are as follows:

a. The Department's latest projection of expenditures for FY 74 is $55,185,210.

b. From July 1, 1973 through December 31, 1973, it was projected that the Department would spend $28,440,000 or 51.5% of the total budget. The actual expenditures during this period were $27,920,000.

c. The projected expenditure for the period January 1, 1974 to June 30, 1974 is $27,265,500.

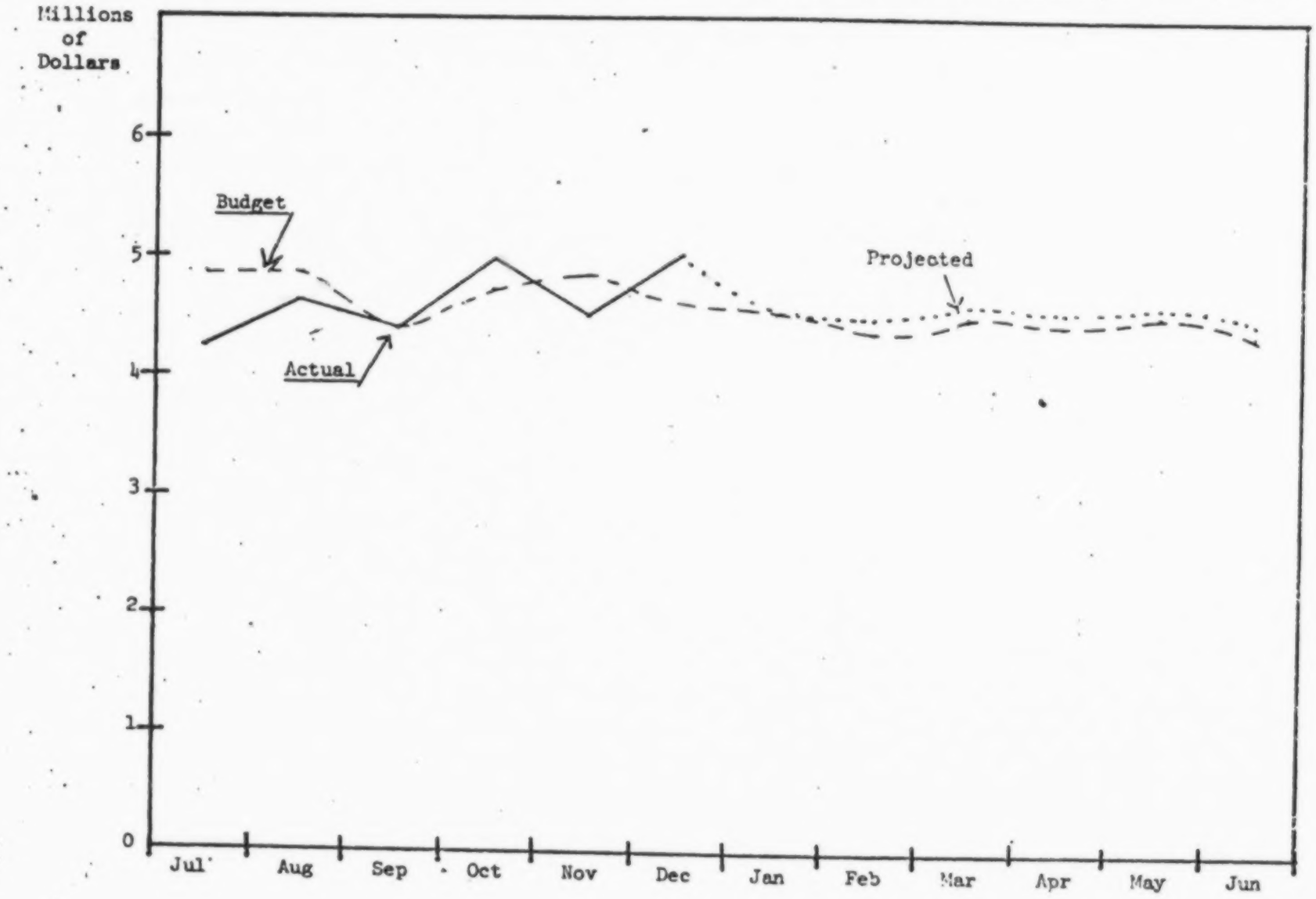
6. The attached graph accurately reflects the expenditures for the first half of the fiscal year and projected expenditure for the balance of this fiscal year.

/s/ Lawrence Masterson
LAWRENCE MASTERSON

Subscribed and Sworn to before me this 14th day of February, 1974.

/s/ David Kalib
Notary Public

Dept. of Social Welfare - Expected Monthly Expenditure Pattern of FY 74 Gross Budget, Minus GA Hospital, with Actual Monthly Expenditures thru December and Projected Monthly Expenditures January thru June



FY 74

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed February 26, 1974]

[Title Omitted in Printing]

AFFIDAVIT

PAUL R. PHILBROOK, being duly sworn, deposes and says:

1. I am Commissioner of the Vermont Department of Social Welfare and am charged by 33 VSA § 2505 with the full responsibility for operation of the Department.

2. I, as Commissioner, have the duty to administer laws applicable to the Department and to fix standards and to promulgate regulations necessary to administer those laws.

3. I am charged with the responsibility, pursuant to 33 VSA 2501(4), to comply with intent of the legislature to maintain a reasonable standard of health and decency based on current cost of living indexes.

4. I am further charged with the responsibility pursuant to 33 VSA § 2554 to allocate payments of assistance when the appropriations are insufficient, and am not authorized to incur a deficit.

5. I have adjusted assistance standards during fiscal year 1974 to reflect the increased cost of living. Because overall funding in the Department is not sufficient to fully meet the revised standards, payments are being made at 90% of the updated standard.

6. Based upon the information supplied to me from the Department of Employment Security, it is my opinion that at least one-half (½) or seven hundred and fifty (750) of the estimated fifteen hundred (1500) families (with two or more dependents) that are receiving unemployment benefits would be eligible and choose to accept an ANFC-UF welfare grant during FY 75.

7. Based upon the present average grant of $327 per month per family for ANFC-UF families, I estimate that

these 750 families will increase the Department's expenditures during FY 75 by $245,250 per month, or $2,943,000 per year, of which $1,018,866 is state funds.

8. With respect to FY 74, if Department expenditures continue as currently projected, funding would not be sufficient to continue payments in all programs at present levels. Before reducing assistance grants, I would seek additional funding from the Emergency Board of state government. If such funds were unavailable or not forthcoming, a reduction in payments under one or more Department programs would be necessary.

9. With respect to FY 75 (Beginning July 1, 1974), the projected expenditure levels included in the Department budget now being considered by the Vermont General Assembly do not contemplate this additional caseload. If a stay is not granted and Department FY 75 expenditures proceed as currently projected, FY 75 appropriations would not be sufficient to cover the cost of these additional 750 families. I would be obliged to request a supplemental appropriation of the 1975 Vermont General Assembly. If that request were not granted, a reduction in payments under one or more department programs would be necessary.

10. If a stay is granted, pending a final decision by the U.S. Supreme Court, I shall be able to plan for an eventual increase in budget, assuming the lower court decision is affirmed.

/s/ Paul R. Philbrook
PAUL R. PHILBROOK

Subscribed and Sworn to before me this 14th day of February, 1974.

/s/ Dorothy E. Puente
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

[Filed March 15, 1974]

[Title Omitted in Printing]

STAY OF JUDGMENT

Upon the basis of the memoranda, and the arguments of counsel on March 1, 1974, it is ordered, adjudged and decreed that:

1. Except for the above-named plaintiffs, whose judgment is to be satisfied, the judgment order with respect to all those similarly situated individuals, who would qualify for the ANFC-UF option, is hereby conditionally stayed.

2. The stay is conditioned as follows:

(a) All those who would be eligible for ANFC-UF benefits but for the receipt of unemployment compensation (UC) benefits, shall be permitted to apply for and receive supplemental financial assistance from the Department of Social Welfare (DSW) after they have been found eligible to receive UC.

(b) The amount of the supplemental assistance shall be the difference between the UC benefits received (or to be received after the mandatory one-week waiting period prescribed in 21 V.S.A. Sec. 1343(4), together with other earned or unearned income, and the amount the applicant would be entitled to receive had he been eligible under the ANFC-UF program.

(c) The amount of supplemental assistance shall be calculated and paid for the month in which application for the supplemental assistance is filed.

3. The Department reserves the option of granting ANFC-UF to a particular family where the family is eligible for ANFC-UF but for the receipt of UC, and where it would be in the financial best interest of the Department to do so. Such an arrangement can only be

made with the consent of the recipient and his willingness to forego his UC benefits in favor of ANFC-UF. It is the intent of this order to provide the same financial assistance to the applicant irrespective of which program he so chooses.

4. Those individuals found eligible for benefits under paragraph (2) above shall also be eligible for medicaid payments as if they were eligible for and receiving ANFC-UF.

5. All recipients under the terms of this conditional stay shall be afforded the right to notice, hearing and all other procedural safeguards available to recipients of ANFC-UF under appropriate state and federal regulations as concern the granting, modification, continuance or termination of benefits.

6. This stay order shall continue in force until the merits are decided on appeal by the United States Supreme Court or until further order of this court.

DATED at ——— in the District of Vermont, this 15th day of March, 1974.

SO ORDERED.

/s/ James L. Oakes
U.S. Circuit Judge

/s/ James S. Holden
U.S. District Judge

/s/ Albert W. Coffrin
U.S. District Judge

SUPREME COURT OF THE UNITED STATES

No. 73-1820

PAUL R. PHILBROOK, ETC., APPELLANT

v.

JEAN GLODGETT, ET AL.

APPEAL from the United States District Court for the District of Vermont.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 74-132 and a total of one hour is allotted for oral argument.

October 29, 1974

SUPREME COURT OF THE UNITED STATES

No. 74-132

CASPAR W. WEINBERGER, Secretary of Health, Education and Welfare, APPELLANT

v.

JEAN GLODGETT, ET AL.

APPEAL from the United States District Court for the District of Vermont.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to a hearing of the case on the merits. The case is consolidated with No. 73-1820 and a total of one hour is allotted for oral argument.

October 29, 1974

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 564562 79

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

Nos. 73-1820
74-132

PAUL R. PHILBROOK, ETC. and
CASPAR W. WEINBERGER, ETC., APPELLANTS,

v.

JEAN GLODGETT, ET AL.

MOTION TO AFFIRM ON BEHALF OF APPELLEES

The appellees, Jean and Deanna Glodgett and their minor child, Tina Glodgett; Roger and Rosamund Percy and their minor children, Sharon, Sheila, Roger, Mary, Matthew and Charon Percy; Roger and Arlene Derosia and their minor children Larry, Harold, Arthur, Mary and Brian Derosia; and Intervenors Robert and Tiana Spicer and their children Samantha and Stephanie Perry; and Mary and William Sarazin and their minor children Tina, William and Sean Sarazin, pursuant to Rule 16 of this Court's Rules, hereby move that the judgment below be affirmed on the grounds that the question on which the appeal of the cause depends is so insubstantial as not to need further argument and that the decision below is plainly correct.

QUESTIONS PRESENTED

1. Whether federal court jurisdiction extends to the statutory claim irrespective of whether the Court has pendent jurisdiction over the Secretary of the U.S. Department of Health, Education and Welfare.

-1-

2. Whether the district court properly read 42 U.S.C. Section 607(b)(2)(C)(ii) as applicable only to the actual receipt of state unemployment compensation thus giving the father the option of declining unemployment benefits in favor of higher ANFC-UP payments.

3. Whether the decision of the district court conflicts with the decision in Burr v. Smith, 322 F. Supp. 980 (W.D. Wash. aff'd. 404 U.S. 1027 (1972).

STATEMENT

Subchapter IV(A) of the Social Security Act of 1935, 42 U.S.C. Sections 601-643, provides for grants to states for Aid and Services to Needy Families with Children. Section 601 of Title 42 authorizes an appropriation for the purpose of enabling the states to furnish financial assistance to needy dependent children and their parents or relatives with whom they are living "to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection,..."

Until 1961, benefits under the AFDC program were limited to needy children who had been "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent,..." 42 U.S.C. Sec. 606. In recognition of the fact that the limitation on eligibility for AFDC meant that "unemployed fathers are forced to desert their families in order that their families may receive aid" and that "there is no reason why a hungry child of an unemployed father should not be fed, as well as a child in other unfortunate

circumstances, 1/ the federal administration proposed in 1961 that AFDC eligibility be extended to children in intact families who were disadvantaged due to the unemployment of a parent. With some modifications, the Administration proposal became Section 407 of the Social Security Act, 42 U.S.C. Section 607. That provision gave the states the option of expanding the definition of "dependent child" to include a needy child who has been deprived of parental support or care by reason of the unemployment (as defined by the state) of a parent. Act of May 8, 1961, Pub. L. 87-31, 75 Stat. 75.

Originally enacted for a one year period, Section 407 was extended for five years by the 1962 amendments to the Social Security Act; extended again until June 30, 1968, and finally amended in its entirety and made permanent in 1968.

In the course of amending Section 407 in 1967, 2/ Congress inserted a provision that had the effect of denying federal funds to reimburse states for payments made to families where the unemployed father was also receiving unemployment compensation. 3/ Section 407(b)(2)(C)(ii) presently provides:

> "(b) The provisions of subsection (a) (the expanded definition of 'dependent child') shall be applicable to a State if the State's plan approved under Section 602 of this title--
>
> ***
>
> (2) provides--
>
> ***
>
> (C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section--
>
> ***
>
> (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States."

The State of Vermont has implemented the disqualification provision by Welfare Regulation 2331.31 and interprets it to mean that if a father is merely eligible for unemployment compensation, no matter how small the benefit, the family is automatically and totally disqualified from ANFC-UF regardless of need.

This action was initiated by several Vermont families to challenge the constitutionality of the disqualification provision or, in the alternative, to construe it to apply only to the actual receipt of unemployment compensation. In each case the amount of unemployment compensation available to the family was less than its entitlement under the ANFC-UF program. 4/ The suit sought declaratory and injunctive relief against the Secretary of the U.S. Department of Health, Education and Welfare and the Commissioner of the Vermont Department of Social Welfare. Since it sought to enjoin the enforcement of a federal statute and a welfare regulation of statewide application, a three judge court was convened.

The Court sustained plaintiffs' claim that 42 U.S.C. Section 607(b)(2)(C)(ii) affords the family an option of rejecting unemployment compensation in favor of the higher ANFC-UF benefits, without reaching the claims based on the Fifth and Fourteenth Amendments. In a supplemental Opinion and Order dated December 28, 1973, the Court held that the judgment would operate prospectively to the benefit of all others similarly situated.

On March 1, 1974, acting on a motion filed by the Department of Social Welfare, the court granted a conditional stay of its judgment with respect to similarly situated families. Under the terms of the stay, persons receiving unemployment compensation are permitted to apply for and receive supplemental financial assistance from the Department of Social Welfare so that the total amount of benefits equals the amount they would

otherwise receive under ANFC-UF.

ARGUMENT

1. Federal jurisdiction extends to the statutory claim even assuming that the Court lacks pendent jurisdiction over the Secretary of the Department of Health, Education and Welfare

The jurisdictional basis for the action against Commissioner Philbrook was 28 U.S.C. Sec. 1343(3). Jurisdiction against Secretary Weinberger originally was predicated on 28 U.S.C. Sec. 1331 and 28 U.S.C. Sec. 1361. The District Court, relying on Aguayo v. Richardson, 473 F.2d 1090, 1102 (2d Cir. 1973)cert. denied, 94 S. Ct. 900 (1974), held that 28 U.S.C. Sec. 1343(3) afforded jurisdiction over both sets of defendants. The court reasoned that it had pendent jurisdiction over the claim against the Secretary since his enforcement of the disqualification provision made him partially responsible for the deprivation of benefits.

It is clear that the court had jurisdiction over the Commissioner by virtue of 28 U.S.C. Section 1343(3). Although the Solicitor General states that the question of pendent jurisdiction over the Secretary is "difficult and complex," he also suggests that if this Court should affirm the District Court's decision,

> "the jurisdictional question with respect to the Secretary would become inconsequential since the Secretary as well as the State would, of course, administer the statute in accordance with this Court's interpretation of it." Brief of HEW, n. 8, p. 17.

Apparently, the Solicitor General's position is that subject matter jurisdiction conferred by 28 U.S.C. 1343(3)

gives the Court ancillary jurisdiction to construe the provisions of the Social Security Act irrespective of the Secretary's presence as a party to the litigation. Cf. Glover v. McMurray, 361 F. Supp. 235, 241 (S.D.N.Y. 1973). Assuming that the Solicitor General is correct that the difficult jurisdictional question can be obviated in this fashion, there would be no impediment to a summary affirmance of the District Court's judgment for the reasons hereinafter set forth.

2. The Court properly held that 42 U.S.C. Sec. 607(b)(2)(C)(ii) provides families with an option and excludes families from ANFC-UF benefits for only those weeks in which an otherwise eligible father elects to receive unemployment compensation

A. The statutory language is clear, making it unnecessary to explore the purposes of the statute by resorting to the legislative history

It is well settled that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. Osaka Shoshen Kaisha Line v. United States, 300 U.S. 98, 101 (1937); Kuehner v. Irving Trust Co., 299 U.S. 445, 449 (1937); Wilbur v. United States, 284 U.S. 231, 237 (1931). The District Court held that "It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation." Glodgett v. Betit, 368 F. Supp. 211, 217 (D.Vt. 1973). The Court is not confronted, as it was in Richards v. United States, 369 U.S. 1, 11 (1962), with an inherently ambiguous phrase such as "law of the place;" or with imprecise words such as "restrain or coerce," at issue in NLRB

v. Allis Chalmers Mfg. Co., 388 U.S. 175, 184 (1967); or language which "does not make clear its intended scope." Allen v. State Board of Elections, 393 U.S. 544, 570 (1969).

Internal evidence that Congress was capable of making a distinction between "receipt" of unemployment compensation and "eligibility" for benefits is found in another subsection of the same statute, enacted on the same day as Section 607 (B)(2)(C)(ii). Section 607(b)(i)(C) sets forth the qualifications of prior attachment to the labor force required for state participation in the AFDC-UF program. A family will qualify only if the father (1) has six or more quarters of work in any thirteen calendar quarter period ending within a year of applying for ANFC or (2) if he received or was qualified to receive unemployment compensation within the meaning of subsection (d)(3) of Section 607. Section 607(d)(3)(A) states that an individual shall be deemed "qualified for unemployment" if "he would have been eligible to receive such unemployment compensation upon filing application,..."

The failure of Congress to utilize similar language in Section 607(b)(2)(C)(ii) or to incorporate Section (d)(3)(A) by reference suggests that a family was to be excluded from ANPC-UF only for each week in which the father actually received unemployment compensation.

This was a view originally shared by the Department of Health, Education and Welfare. 5/ Thus, in footnote two of its initial brief in the District Court, the government unequivocally stated:

> "It is the receipt of unemployment benefits and not merely eligibility for such benefits which is the operative factor here; Section 607 (b)(2)(C)(ii) turns on receipt of unemployment compensation, not eligibility for such benefits."

The Court relied on this statement as accurately reflecting the Government's position. Glodgett v. Betit, 368 F. Supp., supra, at 217. 6/

The appellants urge the Court to apply the rule that it will look beyond the words where a literal reading would lead to absurd or futile results or an unreasonable one "plainly at variance with the policy of the legislation as a whole." Perry v. Commerce Loan Co., 383 U.S. 392, 400 (1966), quoting United States v. American Trucking Assns., 310 U.S. 534, 543 (1940). However, the literal reading given the statute by the Court produces none of these.

Ensuring a subsistence income for all children made needy due to the unemployment of their fathers can hardly be considered absurd or futile. Nor does the Court's construction conflict with the intent of other relevant provisions of the same statutory scheme. The Commissioner relies on 42 U.S.C. Sec. 602(a)(7) and its implementing regulations to support its thesis that an irreconcilable conflict results from the Court's application of the statute. The conflict said to arise is illusory.

42 U.S.C. Sec. 602(a)(7) simply instructs the state agency to take income and other resources into consideration in determining the need of applicants for AFDC. But receipt of unemployment compensation works a complete disqualification from the program regardless of need. As the Commissioner points out in footnote 14 of his brief, unemployment compensation as a resource is sui generis in requiring automatic disqualification from AFDC benefits.

The references to the Handbook of Public Assistance Administration on pages 10 and 11 of the Commissioner's brief

all predate the enactment of Section 607(b)(2)(C)(ii) in 1968. Therefore, it is not surprising that unemployment compensation is referred to as a resource. From 1961 to 1968 it was optional with the states to supplement unemployment compensation with AFDC payments. In any event, since the Handbook references are to the OASDI program, they are of questionable materiality.

The superseding regulations in 45 C.F.R. 233.20(a)(3)(ii)(c) and 45 C.F.R. 233.20(a)(3)(ix), cited by the Commissioner, are similarly inapposite. The scope of those regulations is placed in proper perspective by 45 C.F.R. 233.20(a):

> "Requirements for State Plans. A State Plan for OAA, AFDC, AB, APTD, or AABD must, as specified below:
> (1) General. Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where otherwise specifically authorized by Federal Statute."

Since unemployment compensation is statutorily treated differently from other resources in that recipients are disqualified regardless of need, these regulations do not apply.

The category of Dependent Children of Unemployed Fathers is separately treated in 45 C.F.R. 233.100. Those regulations lend no support to the appellants' position. 45 C.F.R. 233.100(a)(5)(ii) tracks the statutory language in providing for the denial of aid to a dependent child "with respect to any week for which such child's father receives unemployment compensation...." The regulations also emphasize the difference between the statutory language in Section 607(b)(1)(c) and 607(d)(3) defining the term "qualified for unemployment." 45 C.F.R. 233.100(a)(3)(ii) and 45 C.F.R. 233.100(a)(3)(v).

Finally, the Commissioner argues that the District Court's reading of Section 607(b)(2)(C)(ii) produces extraordinary results by (1) shifting the burden of supporting unemployed fathers and their families from employer contributions to welfare; (2) by unjustly enriching employers by reducing their rate of contribution to the unemployment fund over a period of time, and (3) by encouraging "program shopping."

But the incidental effects on the unemployment insurance fund are not "extraordinary results" when the differing purposes of the two programs are taken into consideration. "Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed." Report of Senate Finance Committee, No. 628 74th Cong. 1st Sess. p.11 (1935). As this Court recently said in California Human Resources Dept. v. Java, 402 U.S. 121, 130 (1971):

> "It is true, as appellants argue, that the unemployment compensation insurance program was not based on need in the sense underlying the various welfare programs that had their genesis in the same period of economic stress a generation ago. A kind of "need" is present in the statutory scheme for insurance, however, to the extent that any "salary replacement" insurance fulfills a need caused by lost employment, the objective of Congress was to provide a substitute for wages lost during a period of unemployment not the fault of the employee."

The Commissioner argues that it was originally the intention of Congress, as revealed in the legislative history of 1935, that unemployment compensation would be the first line of defense for the unemployed, providing a subsistence income without the necessity of resorting to relief. But the Commissioner acknowledges that the distinction was "somewhat obscured" in 1961 when Congress expanded the definition of "dependent child" with the express purpose of including the children of the unemployed. Brief of Dept. of Soc. Welfare pp. 17-18. The mere fact that in 1935 Congress recognized

that unemployment compensation would incidentally benefit many children in the homes of unemployed workers does not mean that in 1968 it would brook a harsh discrimination against those children. 7/

Nor would the Court's application of the statute necessarily inure to the economic benefit of employers. Since employers are segregated into rate classes for purposes of determining their contribution rate to the fund, 21 V.S.A. Sec. 1326(A)(2), their rate would change only if their class changed. 8/ Moreover, even if the contribution rate did decline, this cannot be characterized as a "windfall" or "unjust enrichment." It simply means that the employer would not be taxed at as high a rate in the future because his employees were drawing less from the fund.

The problem of notice alluded to by the Commissioner as "program shopping" is hardly the type of extraordinary result that would justify a departure from the plain meaning of the statutory language.

It is not an "extraordinary result" that Congress should make provision for those families in which the amount of available unemployment compensation falls far below the subsistence level as defined by the State for purposes of its ANFC program. Indeed, it would be extraordinary if some children were deprived of subsistence solely due to their father's eligibility for unemployment compensation. 9/

Where the language of Section 607(b)(2)(C)(ii) is "crystal clear," Allen v. State Board of Education, 393 U.S., supra, at 570, internally consistent, Malat v. Riddell, 383 U.S. 569, and compatible with other provisions of the Aid to Families with Dependent Children program, there is no occasion to depart from the literal meaning of the statutory language. Kuehner v. Irving Trust Co., supra; Wilbur v. United States, supra.

P. Assuming the circumstances of this case require resort to the legislative history, that history is not at variance with the district court's reading of the statute

It is clear that when Congress created the optional unemployed parent program in 1961, it left it up to the individual states to decide whether AFDC could be used to supplement unemployment compensation. This was an early recognition that state unemployment compensation benefits might fall below the level of subsistence. The legislative history since 1967 is unilluminating as to Congress' intention regarding the impact that eligibility for unemployment compensation would have on eligibility for AFDC-UF.

The House Ways and Means Report [10] simply states that "Under the committee bill, states must exclude from the program anyone who is receiving unemployment compensation."

The report of the Senate Finance Committee [11] was concerned that under the House bill a family was excluded from AFDC for any month in which the father received unemployment compensation.

> "The House bill prohibits the payment of assistance (with federal participation) to a family that receives any amount of unemployment compensation during the same month. Since the unemployment compensation may be for only a small part of the month, a family's income could be far below the state's standard of need and still the family would be ineligible for assistance. The committee bill returns to existing law under which the choice as to whether unemployment compensation payments can be supplemented, is left to the states."

The conference report [12] sheds no light on the matter and, in fact, muddies the waters even more. The report states:

"Unemployed Fathers Under AFDC"

"Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203(a) of the House Bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to exclude fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid and fathers who receive (or are qualified to receive) any unemployment compensation under state law."

The Senate amendments removed these exclusions and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month. (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill).

The Senate recedes (except on the conforming amendments and effective date provisions)."

The committee was clearly talking about the eligibility requirement that the father either have six quarters of work in the previous thirteen calendar quarters or been receiving or qualified to receive unemployment compensation within the year prior to his applying for ANFC, and not the exclusion of families in which the father is currently receiving unemployment compensation. The second paragraph simply describes the amendment offered by the Senate which would have excluded these two eligibility provisions and retained the optional supplement approach of the 1961 legislation. While the syntax is confusing, it is clear that the committee was describing two quite different proposals. This reading is bolstered by the fact that there is nothing in the House report to indicate that families would be excluded if the father is presently eligible for unemployment compensation but refuses to accept it.

This analysis is furthered by the 1968 conference report, 13/

> "Section 302. Aid to families with dependent children in case of unemployed fathers receiving unemployment compensation.
>
> Section 302 of the conference substitute corresponds to section 14(c) and (d) of the Senate amendment. Section 14(c) and (d) eliminated the provision (in sec. 407(b)(2)(C) of the Social Security Act) prohibiting the payment of AFDC to a family on the basis of the father's unemployment for any period in which the father receives unemployment compensation under State or Federal law, and substituted a provision (in sec. 407(c)) giving each state the option under the State plan to deny all or any part of the aid otherwise payable under the plan to a family on the basis of the father's unemployment for any month if the father received unemployment compensation under State or Federal law for any week or part of which is included in such month. There was no corresponding provision in the House bill.
>
> Section 302 of the conference agreement instead modifies section 407(b)(2)(C) of the act to prohibit the payment of AFDC to a family on the basis of the father's unemployment with respect to any week for which the father receives unemployment compensation under State or Federal law. It is the intention of the conferees that if the father receives unemployment compensation for all the weeks which fall wholly or partly in a month, the family could not under any circumstances receive all AFDC payment for that month; and if the father receives unemployment compensation for one or more but less than all the weeks which fall (wholly or partly) in a month, the family's AFDC payment will be reduced by the percentage of the month represented by such week or weeks (or by the portion of such week or weeks which falls in such month)."

Again, the conference committee speaks solely in terms of the father's "receipt" of unemployment compensation and not his eligibility to receive such benefits.

On page 12 of his brief, the Solicitor General refers to a Report of the Senate Finance Committee to support his interpretation of Section 607(b)(2)(C)(ii). However, the language he quotes is merely a heading preceding the names of

certain persons who gave testimony before the Senate Committee. This is hardly persuasive of Congress' intention in enacting the disqualification provision. 14/

3. Burr v. Smith, 322 F. Supp. 980 (W.D. Wash. 1971) aff'd. 404 U.S. 1027 (1972) did not resolve the issues raised in the case at bar

Appellants take the position that the District Court's decision in the instant case is in irreconcilable conflict with Burr v. Smith, supra. In Burr v. Smith, the plaintiffs attacked the state regulation implementing the disqualification provision without attacking the federal statute itself. The court simply noted that the availability of federal matching funds depended upon inclusion of this provision in the state plan and held that this was a rational basis for the state regulation. In a footnote, the district court noted that a father could not avoid disqualification by failing to register for and receive unemployment compensation, citing Washington State welfare regulations to that effect. But the court did not address the question, presented here, whether these were in conflict with the federal statute.

Plaintiffs also argued that the state had an obligation to set up a wholly state funded plan to supplement benefits of unemployed fathers receiving unemployment compensation. The court rejected plaintiffs' equal protection argument and offered several justifications for different treatment. This Court, in affirming without opinion, might have agreed that there were rational bases on which to excuse the state from creating and funding its own program. Manifestly, the instant case arises in a different context and Burr is not controlling.

CONCLUSION

For the foregoing reasons, the judgment of the United States District Court for the District of Vermont should be affirmed.

September 25, 1974

Respectfully submitted,

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FOOTNOTES

1/ Statement and Testimony of Abraham Ribicoff, Secretary of the U.S. Department of Health, Education and Welfare. Hearings on H.R. 3864 and H.R. 3865 before the House Committee on Ways and Means, 87th Cong. 1st Sess. at 95 (1961).

2/ Congress' primary concern in amending Section 407 was to correct the disparity in eligibility requirements that had resulted from the provision in Section 407 that "unemployment" be defined by the states. Section 407, as amended, empowers the Secretary of Health, Education and welfare to define "unemployed." See H.R. Report No. 544, 90th Cong. 1st Sess. 108 (1967); S. Report No. 744, 90th Cong. 1st Sess. 160 (1967). See Levy, Lewis and Martin, Social Welfare and the Individual, 430-32 Foundation Press (1971).

3/ As originally enacted, Section 407(b)(2)(C)(ii) provided for the denial of AFDC to any child "if, and for as long as, such child's father--

> "(i) is not currently registered with the public employment offices in the state, or (ii) receives unemployment compensation under an unemployment compensation law of a State or of the United States."

Act of Jan. 2, 1968, Pub. L. 90-248, Title II, Sec. 203(a), 81 Stat. 882.

4/ The differential in monthly benefits for each family is shown by a chart prepared by HEW for its brief and reproduced here:

	AFDC	UNEMPLOYMENT COMPENSATION
Glodgett.....	$239	$60
Derosia	394	56
Percy.....	410	172

Plaintiffs submitted a Memorandum Concerning Average Monthly Payments Under AFDC-UP and Unemployment Insurance in the District Court utilizing statistics based on fiscal year 1972. This study showed that the average AFDC-UP payments were greater than average UI payments in 16 of the 25 states participating in the UP program and that 81% of families receiving AFDC-UP lived in those 16 states.

5/ See brief of the Department of Health, Education and Welfare dated August 11, 1972, p.7 note 2, and p. 17.

FOOTNOTES (continued)

6/ The Solicitor General avers that the district court must have overlooked a "clarifying" statement contained in a subsequent memorandum of law. Brief of HEW, No. 74-132, p.7, note 2. Presumably, the court felt that HEW was bound by its original representation, which is consistent with its regulation contained in 45 C.F.R. 233.100(a)(5)(ii).

7/ Aside from the fact that it is sophistry to speak in terms of "shifting the burden of support" when the purposes of the programs are dissimilar, it should be remembered that not all families who would prefer to exercise the option will automatically qualify for AFDC-UF. For example, the father must meet the eligibility requirements of Section 607(b)(1) and cannot have over $1800 in resources to be eligible.

8/ Whether or not the employer's class changed would depend on a number of variables including the amount of the employer's benefit ratio, the amount of his annual taxable payroll and its relationship to annual taxable payrolls of other employers. 21 V.S.A. Sec. 1326(A)(1). The classes are determined by cumulative payroll percentage limits. (Col. B of Table accompanying 21 V.S.A. Sec. 1326). Absent the right combination of factors, an employer whose taxable payroll is near the ceiling would not have his contribution rate reduced.

9/ This result would be particularly irrational in light of the fact that a man who quits his "voluntarily without good cause attributable to his employer" or who is discharged for misconduct connected with work is disqualified from receiving unemployment compensation for up to twelve weeks. 21 V.S.A. Sec. 1344. His family will be eligible for the higher AFDC benefits. It is the man who leaves for good cause whose family is penalized.

10/ H.R. Report No. 544 (accompanying H.R. 12080) 90th Cong. 1st Sess. at 108 (1967).

11/ S. Fin. Comm. Rep. No.744, 90th Cong. 1st Sess. at 160 (1967).

12/ H.R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967).

13/ S. Rep. No. 1014, 90th Cong. 2d Sess. 9 (1968)

14/ These "headings" purport to summarize the testimony of the persons whose names appear under them. The following caveat appears as an Editor's Note:

> "Editor's Note.--Due to the voluminous oral and written testimony on H.R. 12080 and related proposals, in order for any summary to be useful, it is necessary to broadly categorize positions of organizations and individuals. In so doing, it should be understood that it is not possible to include all of the qualifications or conditions with which such organizations and/or individuals may have accompanied such position on each issue. Nor is it possible to attempt an interpretation of a stated position. Nevertheless, an objective attempt has been made to present fairly the position of each witness."
> Brief Summary of Major Recommendations Presented in Oral and Written Statements During Public Hearings before Senate Committee on Finance, on H.R. 12080, 90th Cong., 1st Sess., p. vii (Committee Print 1967).

CERTIFICATE OF SERVICE

I, Richard S. Kohn, attorney for the appellees herein and a member of the Bar of the United States Supreme Court, certify that on September 27, 1974, I served copies of Appellees' Motion to Affirm, Motion for Consolidation of Appeals, Motion for Leave to Proceed In Forma Pauperis and Affidavits of Jean Glodgett and Roger Percy on the defendants in the manner prescribed by law, by placing same in the United States mail, first class and postage prepaid, addressed to the office of the counsel of record, and as to the Solicitor General, by air mail postage prepaid. The addressees are as follows:

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No. 73-1820

In the Supreme Court of the United States

OCTOBER TERM, 1974

PAUL R. PHILBROOK,
APPELLANT

v.

JEAN GLODGETT, ET AL.,
APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

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S. Rep. No. 628, 74th Cong., 1st Sess. (1935) 25, 26

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820
PAUL R. PHILBROOK,
APPELLANT
v.
JEAN GLODGETT, ET AL.,
APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

BRIEF FOR THE APPELLANT

OPINION BELOW

The opinion and supplemental opinion and order of the United States District Court are reported at 368 F. Supp. 211 (1973). The Court's order of judgment, which is not reported, is set out in appellant Philbrook's Jurisdictional Statement (J.S.) at 41-43.

JURISDICTION

The judgment of the three-judge District Court was entered on February 21, 1974. A notice of appeal to this Court was filed on April 9, 1974. (J.S. at 45-46) The Jurisdictional Statement was filed on June 3, 1974, and probable jurisdiction was noted on October 29, 1974. The jurisdiction of this Court rests on 28 U.S.C. §1253.

QUESTION PRESENTED

Was the District Court correct in deciding that 42 U.S.C. §607(b)(2)(C)(ii)[1] and §2333.1(3) of the Vermont Welfare Assistance Manual exclude families from Aid to Needy Families with Children[2] benefits for only those weeks in which an otherwise eligible father actually receives unemployment compensation, and thereby provide the father with the option of rejecting unemployment compensation for which he is qualified in favor of more advantageous ANFC benefits?

STATUTE AND REGULATION INVOLVED

42 U.S.C. §607(b)(2)(C)(ii) reads as follows:

> (b) The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title . . .
>
> (2) provides . . .
>
> (C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section...
>
> (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

Section 2333.1(3) of the Vermont Welfare Assistance Manual reads as follows:

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[1] Section 407(b)(2)(C)(ii) of the Social Security Act of 1935, as amended, 82 Stat. 273. Since the District Court used the United States Code citation, the appellant will use this citation throughout as well.

[2] Vermont has chosen to refer to its program under Title IV-A of the Social Security Act (42 U.S.C. §601 *et seq.*) as "Aid to Needy Families with Children" rather than "Aid to Families with Dependent Children" as it is referred to in the Act itself and elsewhere. The Vermont program shall be referred to hereinafter as "ANFC." When reference is to the Unemployed Father provisions, the program shall be referred to as "ANFC-UF".

> An "unemployed father" is one whose minor children are in need because he is out of work, is working part-time, or is not at work due to an industrial dispute (strike), for at least 30 days prior to receiving assistance, provided that . . .
>
> (3) He is not receiving Unemployment Compensation during the same *week* as assistance is granted. [emphasis in original text]

The full texts of 42 U.S.C. §607 and §2333.1 of the Manual are set out in appellant Philbrook's Jurisdictional Statement at 47-50 and 51-52, respectively.

STATEMENT OF THE CASE

1. Introduction

This case arises under Title IV-A of the Social Security Act of 1935, as amended, (42 U.S.C. §§601-610), which establishes the federal-state Aid to Families with Dependent Children (AFDC) program.[3] The Social Security Act provides for substantial federal payments to states for the funding of state assistance programs on behalf of families with a dependent child or children. In order to be eligible for federal payments, however, there must be a "state plan" under 42 U.S.C. §602(a) which meets all of the relevant requirements of the statute and its implementing regulations.

For purposes of the AFDC program, a "dependent child" is defined in 42 U.S.C. §606(a) to mean, in part, a needy child who is deprived of parental support or care because of the death, continued absence from the home, or physical or mental incapacity of a parent.[4]

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[3] See generally *King* v. *Smith*, 392 U.S. 309, 313, 316-17 (1968); *Rosado* v. *Wyman*, 397 U.S. 397, 407-09 (1970); *Shea* v. *Vialpando*, 94 S.Ct. 1746, 1750 (1974). See also M. Barth, G. Carcagno and J. Palmer, *Toward an Effective Income Support System: Problems, Prospects, and Choices* 15-19 (1974).

[4] 42 U.S.C. §606(a) reads as follows:

> The term "dependent child" means a needy child (1) who has been

In addition, states are given the option under 42 U.S.C. §607(a)[5] to expand the definition of "dependent child" to include a needy child who has been deprived of parental support because of his father's unemployment.[6] If a state plan provides for payments to families whose child is dependent because of the father's unemployment, the state must, among other things, meet the requirements of 42 U.S.C. §607(b)(2)(C)(ii).

That section requires that a state plan provide for the denial of assistance to such families with respect to any week for which the child's father receives unemployment compensation under a state or federal unemployment compensation law. This provision is implemented by a regulation promul-

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deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment; . . .

[5] 42 U.S.C. §607(a) reads as follows:

> The term "dependent child" shall, notwithstanding section 606 (a) of this title, include a needy child who meets the requirements of section 606 (a) (2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606(a)(1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

[6] As of April, 1974, the Unemployed Father provisions were in effect in 26 states. See *Public Assistance Statistics April 1974*, DHEW Publication No. (SRS) 75-03100, NCSS Report A-2 (4/74), Table 5.

gated by the United States Department of Health, Education and Welfare, set forth at 45 C.F.R. §233.100(a)(5)(ii).[7]

The State of Vermont participates in the Unemployed Father segment[8] of the AFDC program under an approved state plan. In order to comply with the above-mentioned requirements, the Vermont Department of Social Welfare has promulgated §2333.1(3) of the Welfare Assistance Manual, which parallels 42 U.S.C. §607(b)(2)(C)(ii) and provides for the denial of ANFC-UF benefits for any week during which the unemployed father receives unemployment compensation.

2. District Court Proceedings

Appellees (plaintiffs below) are members (parents and minor children) of three Vermont families. Two of the families were terminated from the receipt of ANFC-UF benefits once the father began to receive weekly unemployment compensation. The third family's application for

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[7] 45 C.F.R. §233.100 (a) (5) (ii) reads as follows:

> (a) Requirements for State Plans. If a state wishes to provide AFDC for children of unemployed fathers, the state plan under Title IV — Part A of the Social Security Act must, except as specified in paragraph (b) of this section . . . (5) Provide for the denial of such aid to any such dependent child or the relative specified in section 406 (a) (1) of the Act [42 U.S.C. §606 (a) (1)] with whom such child is living, . . . (ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States.

[8] The Unemployed Father segment is significant, both in Vermont and nationwide. In April 1974, for example, 862 families in Vermont were participating. The average amount of payment per family was $334.33, or $71.26 per recipient. The total amount expended in Vermont for the month was $288,191. Nationwide, 99,911 families received benefits under the UF segment during April, 1974. The average payment per family was $287.55, or $63.09 per recipient. The total monthly expenditure was $28,729,652. *Public Assistance Statistics April 1974, supra.*

ANFC-UF was denied because the father, at the time of application, was receiving unemployment compensation. In each case the amount of weekly unemployment compensation was less than the amount the family had been receiving or would have received under ANFC-UF.[9]

Suit was brought on March 6, 1972, in United States District Court for the District of Vermont seeking declaratory and injunctive relief and damages. The action against the Vermont Commissioner of Social Welfare was brought pursuant to the provisions of 42 U.S.C. §1983. The suit challenged the constitutionality of 42 U.S.C. §607(b)(2)(C)(ii) and §2333.1(3) of the Vermont Welfare Assistance Manual, alleging that the statute and regulation violated respectively the Due Process Clause of the Fifth Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment. The plaintiffs below alleged that the court had jurisdiction over the Commissioner under 28 U.S.C. §§ 1343(3) and (4) and 28 U.S.C. §1331, and over the federal defendant under 28 U.S.C. §1361 and 28 U.S.C. §1336. A three-judge Court was convened under 28 U.S.C. §§2281-2282.

At the oral argument held on March 5, 1973, plaintiffs raised for the first time a statutory claim. They suggested that the families could avoid disqualification under §607(b)(2)(C)(ii) and §2333.1(3) if the father refused to accept the unemployment compensation to which he was entitled. It was argued that the statutory and regulatory provisions exclude a family from eligibility only for those weeks in which the unemployed father actually receives

[9]

	ANFC (Monthly)	Unemployment Compensation (Monthly)
Glodgett	$239	$ 60
Percy	410	172
Derosia	394	56

unemployment compensation. (Transcript of Oral Argument, March 5, 1973 at 42-44)

The three-judge Court determined that jurisdiction existed over both defendants under 28 U.S.C. §1343(3), but decided the case on the basis of the statutory claim, thereby avoiding a decision on the constitutional issues.

In its opinion of October 17, 1973, the Court found that actual receipt of and not eligibility for unemployment compensation was controlling for ANFC-UF eligibility. From this determination, the Court concluded that an individual otherwise eligible for both programs could take his choice.[10]

The final order, issued February 21, 1974, enjoined the Commissioner from denying ANFC-UF to any individual eligible for unemployment compensation in that it prohibited him from compelling any individual to avail himself of unemployment compensation benefits and required him to advise applicants of this option. Even though the case was not certified as a class action, the order bound the appellant with respect to all others similarly situated. (J.S. at 41-43)

Appellant's stay of execution of the judgment was granted on March 1, 1974. (Appendix at 103)

[10] On January 8, 1974, the Court issued a supplemental opinion and order which, among other things, denied the appellant's motion for a new trial and appellees' motion for a rehearing with respect to the Court's denial of class action certification.

SUMMARY OF ARGUMENT

I

The District Court's option plan, whereby an unemployed father may reject the unemployment compensation to which he is entitled in order to receive more advantageous benefits under the AFDC-UF program, is contrary to the AFDC statutory scheme.

Under 42 U.S.C. §602(a)(7), the states must take into consideration "any other income and resources" of an applicant for AFDC benefits. This provision has long been understood to require consideration of any income and resources for which an applicant is qualified, as well as any actually in hand.

Thus, contrary to the District Court's conclusion, the actual receipt of unemployment compensation is not controlling for purposes of AFDC eligibility. Rather, because of the effect of §602(a)(7), if an unemployed father is qualified for such compensation, he is ineligible for AFDC benefits under 42 U.S.C. §607(b)(2)(C)(ii) whether he actually receives it or not.

II

The legislative history of 42 U.S.C. §607(b)(2)(C)(ii) fully supports the appellant's position that an applicant is ineligible for AFDC benefits if he is qualified to receive unemployment compensation. The Conference Committee report on the 1968 amendments to the Social Security Act demonstrates beyond peradventure that Congress intended the word "receives" in §607(b)(2)(C)(ii) to encompass the qualification for receipt of unemployment compensation as well as actual receipt.

Congress, at that time, was attempting to modify the AFDC program so as to reduce the welfare population, and

any other interpretation of §607(b)(2)(C)(ii) would be inconsistent with both the clear statements of the Committee and the overall legislative objective.

III

The District Court's option plan, which would encourage many unemployed fathers to forego their unemployment compensation in favor of AFDC benefits, is totally inconsistent with the purposes of the unemployment compensation program.

That program was designed by Congress to provide assistance as a matter of right to wage earners temporarily out of work so that they would not have to resort to welfare. The unemployment compensation program is an alternative to public assistance, and the benefits thereunder must be exhausted before public assistance will be made available.

Moreover, the District Court's plan would have the effect of benefitting, at the expense of the taxpayer, those employers who are required to contribute to the unemployment compensation trust fund. In those cases where an unemployed father opts for welfare, the unemployment compensation trust fund would remain intact. Yet, there is no suggestion that Congress intended such a result.

IV

Underlying the District Court's option plan seems to be the belief that the Social Security Act requires that all needy families receive benefits which are at least the equivalent of the state standard of need as established under the AFDC program. But, as this court has recognized on several occasions, there is no such requirement under the Act. The Act is not violated if a family receives less benefits from the father's unemployment compensation program than it would under the AFDC program.

ARGUMENT

I. The statutory scheme governing the AFDC program does not permit an unemployed father who is eligible to receive unemployment compensation to forego this entitlement in favor of more advantageous welfare benefits.

In construing 42 U.S.C. §607(b)(2)(C)(ii), the District Court found that "It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation." 368 F. Supp. at 217. With this as a starting point, the court reasoned as follows:

> Since actual payment of unemployment compensation is the controlling factor, rather than eligibility for such payment, the statute affords the unemployed father an option. There is no compulsion that he accept unemployment compensation. He may accept such payment and forego ANFC-UF benefits for himself and his family, or he may accept the benefits afforded by the ANFC-UF program at the cost of surrendering unemployment compensation. The option is to receive (a) ANFC without unemployment compensation, or (b) unemployment compensation without ANFC. We construe this option to operate as follows: If a father otherwise eligible for ANFC-UF receives unemployment benefits which are less than the ANFC payment for which he qualifies, he can reject the unemployment check in favor of the ANFC payment, thereby receiving an income consistent with the state standard of need. If, on the other hand, he receives an unemployment check which is larger than his ANFC stipend would be, he can accept it, and thereby forego his right to ANFC for that week. In either event, the option available to him will provide total income equal to or greater than the state standard of need. *Id.* at 217-218.

This approach is totally improper, however, because it rests upon an erroneous premise. The disqualifying factor is not

actual payment; rather mere qualification for unemployment compensation[11] by itself precludes participation in the ANFC-UF program.

The District Court's error in construction[12] resulted, in part, from the fact that it failed to consider the inter-relationship between §607(b)(2)(C)(ii) and other relevant sections of Title IV-A of the Social Security Act, their implementing regulations, and administrative history. The Court's analysis was limited simply to the very language of §607(b)(2)(C)(ii) itself, and that language was interpreted literally. Clearly, however, individual sections of a single statute should be construed together, *Clark* v. *Uebersee Finanz-Korporation, A. G.*, 332 U.S. 480, 488 (1947); *Erlenbaugh* v. *United States*, 409 U.S. 239, 244 (1972), especially when, as will be demonstrated below, a literal reading produces an unreasonable result clearly contrary to the intent of the legislation as a whole. See *Ozawa* v. *United States*, 260 U.S. 178, 194 (1922); *United States* v. *American Trucking Assns.*, 310 U.S. 534, 543, (1940); *United States* v. *Public Utilities Commission of California*, 345 U.S. 295,

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[11] Repeated use of the term "qualification for receipt" or similar terms is made throughout. It is intended that an unemployed father is qualified to receive unemployment compensation if he would have been eligible to receive it upon filing an appropriate application.

[12] The Court incorrectly states that the "defendants concur" in its construction. 368 F.Supp. at 217. Defendant Philbrook, the appellant here, submitted a memorandum to the District Court in which he specifically opposed this construction of the statute (Defendant Philbrook's Memorandum of Law, April 10, 1973). It is true though, that in a memorandum submitted to the District Court by Defendant Weinberger, he initially took the position that the Court adopted. (Federal Defendant's Memorandum of Law, August 16, 1972, p. 7, n. 2). This was at a time when the construction of the statute was not in issue, however, and his position has since been clarified (Federal Defendant's Memorandum of Law, March 27, 1973, p. 6).

315 (1953); *Perry* v. *Commerce Loan Co.*, 383 U.S. 392, 400 (1965); *Malat* v. *Riddell*, 383 U.S. 569, 571-72 (1966).

By reading §607(b)(2)(C)(ii) in conjunction with 42 U.S.C. §602(a)(7)[13] the intended scope of the former becomes clear; it becomes evident that the word "receives" is intended to include both actual receipt and qualification for receipt.

Section 602(a)(7), a provision applicable to the entire AFDC program, reads as follows:

> A State plan for aid and services to needy families with children must . . . (7) except as may be otherwise provided in clause (8), provide that *the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children*, or of any other individual (living in the same house as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income. (emphasis added)

In 1968,[14] the year Congress first required states which

[13] Section 402(a)(7) of the Social Security Act of 1935, as amended, 53 Stat. 1379.

[14] Prior to 1961, the definition of "dependent child" did not include a child who was dependent because of parental unemployment. In 1961, Congress expanded the definition temporarily (effective May 1, 1961 to June 30, 1962) to include ". . . a needy child under the age of eighteen who has been deprived of parental support or care by reason of the unemployment (as defined by the State) of a parent . . ." The amendment to the Act also gave the States the option to "provide for the denial of all (or any part) of the aid under the plan to which any child or relative might otherwise be entitled for any month, if the unemployed parent of such child receives unemployment compensation under an unemployment compensation law of a State or of the United States for any week any part of which is included in such month." Act of May 8, 1961, Pub. L. 87-31, §1, 75 Stat. 75.

participated in the Unemployed Father program to deny all AFDC benefits to families in which the father receives unemployment compensation, the mandate of §602(a)(7) was implemented in the rules[15] promulgated by the U.S. Department of Health, Education, and Welfare (HEW) in its *Handbook of Public Assistance Administration ("Handbook")*. These rules obviously reflected the agency's interpretation of §602(a)(7). This being the case, it must be presumed that Congress was aware of, and accepted, this interpretation when it passed §607(b)(2)(C)(ii). *Cf. Commissioner of Internal Revenue* v. *Noel's Estate*, 380 U.S. 678, 682 (1965).

With respect to developing potential income and resources for recipients under Titles I, IV, X, XIV, and XVI of the Social Security Act, the *Handbook* provided as follows:

These provisions were extended for five years in 1962. Act of July 25, 1962, Pub. L. 87-543, Title I, §131(a), 76 Stat. 193.

In 1967, Congress extended the termination date from June 30, 1967 to June 30, 1968. Act of June 29, 1967, Pub. L. 90-36, §2, 81 Stat. 94.

In 1968, the provisions were amended twice. The first change, among other things, eliminated the authority for states to apply their own definition of unemployment and gave that authority to the Secretary; limited the applicability of the expanded definition of dependent child to those deprived of parental support or care by reason of the *father's* unemployment; required in a new section 407(b)(2)(C)(ii) (42 U.S.C. §607(b)(2)(C)(ii)) the denial of assistance . . . "if, and for as long as, such child's father . . . receives unemployment compensation under an unemployment compensation law of a State or of the United States;" made the Unemployed Fathers program permanent. Act of January 2, 1968, Pub. L. 90-248, Title II, §203(a), 81 Stat. 882.

The second change in 1968 amended §407(b)(2)(C)(ii) to read as it does at present. Act of June 28, 1968, Pub. L. 90-364, Title III, §302, 82 Stat. 273.

[15] These rules have been viewed as authoritative in several cases, including *Shea* v. *Vialpando*, *supra*; *Lewis* v. *Martin*, 397 U.S. 552 (1970); and *King* v. *Smith*, *supra*.

> The State has the responsibility for establishing policies with reference to potential sources of income that can be developed to a state of availability. *Handbook*, Part IV, §3120.

In explaining this policy, the *Handbook* dealt with the question of whether, under the above-mentioned Titles, the wife of a beneficiary under Old Age, Survivors and Disability Insurance (OASDI) benefits, or a woman with a wage record, must apply for reduced OASDI benefits if she were between age 62 and 65 or whether she could wait until age 65 and receive full benefits. The *Handbook* stated that the woman had an option, but went on to say:

> The Federal Act, however, does not give any individual a right to have his needs met out of an assistance program because of his refusal to accept any resource that is available to him upon application. *Handbook*, Part IV, §3140(4).

The *Handbook* also outlined the appropriate treatment of "Other Statutory Benefits." It stated:

> In addition to OASDI, other statutory benefits to which applicants and recipients for public assistance may qualify include *unemployment insurance*, temporary disability insurance, railroad retirement benefits, civil service retirement benefits, other government retirement benefits (Federal, State, county and local), and veterans benefits. *It is important that the State's policies and procedures for determining eligibility on the basis of need include clear instructions to staff for identifying cases in which such statutory benefits might be a resource, and, with respect to such cases, the process of determining the availability of such resources. Handbook*, Part IV, §3140(6). (emphasis added)

With this administrative interpretation in mind, it is reasonable to conclude that Congress meant the word "receives" in §607(b)(2)(C)(ii) to carry forward the existing policy

which required an AFDC applicant to avail himself of any income or resource that he could obtain upon application.

These *Handbook* provisions have now been superseded by HEW regulations which impose the same requirements. And since HEW is the federal agency charged with the administration of the Social Security Act, deference must be given to its interpretations. *Lewis* v. *Martin*, *supra* at 559. These regulations require that ". . . only such net income as is actually available for current use on a regular basis will be considered, and only currently available resources will be considered . . ." 45 C.F.R. §233.20(a)(3)(ii)(c), and that the state plan must "[P]rovide that the agency will establish and carry out policies with reference to applicants' and recipients' *potential sources of income that can be developed to a state of availability.*" 45 C.F.R. §233.20(a)(3)(ix). (emphasis added)

In Vermont, the long-standing policy is implemented in §2270 of the Welfare Assistance Manual which states:

> All *potential* sources of income and/or resources to meet current or future needs of applicants(s)/recipient(s) shall be explored, identified, and if feasible, developed. The applicant/recipient shall be encouraged to take the initiative, when able, to secure such income and/or resources for himself, with the assistance, if needed, of department staff. Practical and feasible steps in identifying and developing potential income and/or resources include, but are not limited to the following . . .
> 2. *Filing applications for benefits to which the individual may be entitled.* (emphasis added)

Thus, qualification for unemployment compensation has long been considered to fall within the category of "any other income and resources" under §602(a)(7), and this Court has seemingly adopted such an interpretation.

In the recent case of *Shea* v. *Vialpando*, *supra*, this Court had occasion to interpret the last clause of §602(a)(7),

which requires the States to take into consideration "any" expenses incurred in earning income. Mr. Justice Powell said:

> By its terms, [§602(a)(7)] requires the consideration of "any" reasonable work expenses in determining eligibility for AFDC assistance. In light of the evolution of the statute and the normal meaning of the term "any," we read this language as a congressional directive that *no limitation*, apart from that of reasonableness, may be placed upon earning of income. 935 ct. at 1973. (emphasis added)

The word "any" also modifies "other income and resources," which is the clause of §602(a)(7) relied upon here. By applying the same meaning of the word "any" in this context, there should be "no limitation" on the income and resources that must be taken into consideration. "Congress has been careful to ensure that *all* of the income and resources properly attributable to a particular applicant be taken into account, and this individualized approach has been reflected in the implementing regulations." *Id.* at 1954. (emphasis in original)

It should be pointed out that the effect of §607(b)(2)(C)(ii) when read in conjunction with §602(a)(7) is to work a complete disqualification for AFDC benefits. Since §602(a)(7) compels an individual to explore and take advantage of all potential resources, by doing so with respect to unemployment compensation that individual would be prohibited from receiving AFDC under §607(b)(2)(C)(ii). Thus, the availability of unemployment compensation occasions a significantly different result from the availability of other income or resources under §602(a)(7). That there may be different treatment, however, is recognized in 45 C.F.R. §233.20(a)(1) which states that a state plan for AFDC must provide that all types of income will be treated the same "except where otherwise specifically authorized by

Federal statute." (The rationale for treating unemployment compensation differently is discussed below in III.)

Despite all the above, the appellees take the position that the word "receives" does not encompass eligibility for receipt. As support for this position, they refer to the fact §607(b)(1)(C)(i) uses the words "qualified . . . for unemployment compensation," and that since these words are used in one subsection of §607(b), their absence in §607(b)(2)(C)(ii) means that the word "receives" is limited to actual receipt. As stated in appellees' Motion to Affirm at 7, the omission of these words in §607(b)(2)(C)(ii) indicates "that Congress was capable of making a distinction between 'receipt' of unemployment compensation and 'eligibility' for benefits . . ."

Section §607(b)(1)(C)(i), in setting forth as eligibility standards the necessary degree of prior attachment to the labor force, provides that:

> (b) The provisions of subsection (a) of this section [the expanded definition of "dependent child"] shall be applicable to a State if the State's plan approved under section 602 of this title —
>
> (1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when —
>
> * * *
>
> (C)(i) such father has 6 or more quarters of work (as defined in subsection (d)(1) of this section) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d)(3) of this Section) for unemployment compensation under the unemployment compensation law of the

> State, within one year prior to the application for such aid; . . .

The distinction is not significant for present purposes, however, because §607(b)(1)(C)(i) and §607(b)(2)(C)(ii) deal with completely different concepts. In the former, Congress was concerned only with limiting AFDC-UF payments to those individuals who had a prior attachment to the labor force. This prior attachment could be described in part by direct reference to eligibility for unemployment compensation.

On the other hand, §607(b)(2)(C)(ii) deals with the question of receipt of AFDC and unemployment compensation in the same eligibility period. In this respect, there is no reason to examine the prior work history of the applicant and hence no need in this section to speak in terms of qualification to receive unemployment compensation, as distinguished from actual receipt, especially in view of the section's traditional interpretation.

II. The District Court's interpretation is contradictory to relevant legislative history.

Just as it is necessary to view §607(b)(2)(C)(ii) as part of an integral scheme, it is likewise necessary to "undertake the Herculean task of seeking to ascertain Congressional intent through legislative history. This is especially difficult in the welfare area." *Parks* v. *Harden*, 354 F. Supp. 620, 674 (N. D. Ga. 1973). While the instant case is no exception, the existing legislative history supports the appellant's position.

The most important excerpt from the legislative history can be found in the Conference Committee's report of the January, 1968, amendments to the Social Security Act. In the House version of those amendments (the version which was ultimately enacted), states were required to deny

assistance "if, and for so long as [the unemployed father] . . . receives unemployment compensation under an unemployment compensation law of a state or of the United States." The amendment passed by the Senate, however, retained the option provision then in effect, which permitted states to deny any or all AFDC benefits if unemployment compensation were received.[16] The Conference Committee's report explained both versions as follows:

> "Unemployed Fathers under AFDC"
> Amendments Nos. 186, 189, 190, 191, 193 and 195; Section 407 of the Social Security Act, as amended by Section 203(a) of the House bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to *exclude* fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid, *and fathers who receive (or are qualified to receive) any unemployment compensation under state law.* [emphasis added]
> The Senate amendments removed these exclusions and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father receives unemployment compensation during the month. (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill). The Senate recedes (except on the conforming amendments and effective date provisions). H. R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967) [emphasis added].

Thus, it is apparent that the Conference Committee understood the House version to "exclude" from AFDC eligibility those fathers who "receive" unemployment compensation as well as those who are "qualified to receive" unem-

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[16] See n. 14, *supra* at 10.

ployment compensation. In addition, the fact that the words "or are qualified to receive" are enclosed within parentheses suggests that the Conference Committee realized that the word "receives" included both the actual receipt and the qualification for such receipt.

That this is the correct interpretation becomes even clearer when viewed in terms of what Congress was endeavoring to accomplish through enacting the 1968 amendments to the AFDC program. The report of the House Committee on Ways and Means[17] discussed the problem and the proposed solutions as follows:

> AID TO FAMILIES WITH DEPENDENT CHILDREN
>
> * * *
>
> Third, the bill would make reforms in the aid to families with dependent children programs:
>
> (1) To give greater emphasis in getting appropriate members of families drawing aid to families with dependent children (AFDC) payments into employment *and thus no longer dependent on the Welfare rolls*, the bill would require the States.
>
> * * *
>
> (d) To modify the optional unemployed parents program to provide uniform eligibility requirements throughout the United States. (emphasis added).

The report, at 96-97, continued as follows:

> Your committee has studied these problems very carefully and is now recommending several coordinated steps which it expects, over time, will reverse the trend toward higher and higher Federal financial commitments in the AFDC program. The overall plan which the committee has developed, with the advice and help of the Department of Health, Education, and Welfare, amounts to a new direction for AFDC legislation. The committee is recommending the enactment of a series of

[17] H. R. Rep. No. 544, 90th Cong. 1st Sess. 2 (1967).

> amendments to carry out its *firm intent of reducing the AFDC rolls* by restoring more families to employment and self-reliance, thus reducing the Federal financial involvement in the program. These changes are —
>
> * * *
>
> (6) A more definitive program of aid to the children of the unemployed. (emphasis added)

It is quite evident from the above that Congress was vitally concerned with reducing the number of welfare recipients. While the above-quoted excerpts from the Committee Report do not refer specifically to the proposed §607(b)(2)(C)(ii), that section was one component of the overall plan to accomplish the objective. With this in mind, it would be strange indeed to say that Congress at the very same time and through the effect of the very same provision intended to permit unemployed fathers to reject their entitlement and join the welfare rolls.

The only case interpreting the requirements of §607(b)(2)(C)(ii) of which the appellant is aware is *Burr* v. *Smith*, 322 F. Supp. 980 (W. D. Wash. 1971), *aff'd. mem.* 404 U.S. 1027 (1972), and the interpretation is fully consistent with the above-described legislative history. The Court in that case rejected a constitutional challenge to a state statute and regulation which denied AFDC benefits to families in which the father was eligible for unemployment compensation.

In its effect, the regulation was identical to Vermont's: "Under the regulation's terms, children otherwise eligible for AFDC-[UF] assistance are disqualified from receiving benefits during any week in which the fathers receive or are eligible to receive unemployment compensation" *Id.* at 983-984.

The court left no doubt that it understood the regulation to be consistent with the mandate of §607(b)(2)(C)(ii): "Except for this eligibility, plaintiffs would have been en-

titled to receive joint federal-state Aid to Families with Dependent Children (AFDC) benefits designed to assist the families of persons temporarily unemployed (AFDC-[UF]). 42 U.S.C. §607." *Id.* at 981. The court also stated that the regulation "was promulgated in direct response to the federal provision." *Id.* at 983. And at 984: "The purpose of the regulation is to protect the State's eligibility to participate in the federal matching grant program for unemployed fathers. Without the regulation, the State's AFDC-[UF] plan would not meet federal requirements. 42 U.S.C. §607(b); 45 C.F.R. §233.100."

III. The District Court's interpretation evades the intended Congressional purpose of the unemployment compensation program that it be the initial resource for the unemployed and that its benefits be exhausted before an unemployed person can obtain public assistance.

As indicated, the court has fashioned a scheme under which an unemployed father will be encouraged in many cases to enlist his family on the welfare rolls rather than receive unemployment compensation. Yet, this result is entirely contradictory to the clearly stated purpose of the unemployment compensation program. As explained below, that program was expressly designed to keep families off welfare.

The federal statute creating the unemployment compensation program was passed as part of the Social Security Act of 1935, the same Act that created the predecessor of the AFDC program. The country was then suffering from an economic depression, and Congress was attempting to mold new programs to overcome the severe problems.

Unemployment compensation and aid to dependent children represented two separate and distinct approaches, each designed to benefit a different segment of the population

then suffering from economic insecurity. The former was a significant departure from previous ways of dealing with such insecurity; it was based on the principle of insurance, and created a right to compensation during periods of unemployment. The latter was conceived as a program of last resort, one intended to benefit a category of individuals (children) not otherwise protected.

The most thorough discussion by this Court of the purposes of the unemployment compensation program is found in *California Department of Human Resources Development* v. *Java*, 402 U.S. 121 (1971).[18] In that case, the Chief Justice dealt at length with the intended scope of the program as reflected in its legislative history.

He stated at 130-131:

> The Social Security Act received its impetus from the Report of the Committee on Economic Security, which was established by executive order of President Franklin D. Roosevelt to study the whole problem of financial insecurity due to unemployment, old age, disability, and health. In its report, transmitted to Congress by the President on January 17, 1935, the Committee recommended a program of unemployment insurance compensation as a "first line of defense for * * * [a worker] ordinarily steadily employed * * * for a limited period during which there is expectation that he will soon be reemployed. This should be a *contractual right* not dependent on any means test. * * * It will carry workers over most, if not all, periods of unemployment in normal times *without resort to*

[18] Such purposes have also been discussed in several lower court decisions, including *Crow* v. *California Department of Human Resources Development*, 490 F.2d 580, 586 (Duniway, J. concurring and dissenting) (9th Cir. 1973); *Von Stauffenberg* v. *District Unemployment Compensation Board*, 459 F.2d 1128, 1131 (D. C. Cir. 1972); and *District Unemployment Compensation Board* v. *Wm. Hahn & Co.*, 399 F.2d 987, 990 (D. C. Cir. 1968).

any other form of assistance." (footnotes omitted) (emphasis added)

And at 133:

> The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed, to enable workers "to tide themselves over, until they get back to their old work or find other employment, *without having to resort to relief*." Unemployment benefits provide cash to a newly unemployed worker "at a time when otherwise he would have nothing to spend," serving to maintain the recipient at subsistence levels *without the necessity of his turning to welfare or private charity*. Further, providing for "security during the period following unemployment" was thought to be a means of assisting a worker to find substantially equivalent employment. (footnotes omitted) (emphasis added)

Continuing at 131-132:

> Paying compensation to an unemployed worker promptly after an initial determination of eligibility accomplishes the congressional purposes of *avoiding resort to welfare* and stabilizing consumer demands. . . . (emphasis added)

Thus, unemployment compensation and welfare were considered mutually exclusive. The whole import of the former was to meet the needs of the unemployed during temporary periods when jobs were unavailable so that workers would not have to turn to welfare to support themselves and their families. Since by definition the recipient of unemployment compensation would have a prior attachment to the labor market, it was presumed that he would be able to resume work before his compensation was exhausted. If work was not forthcoming, and the recipient exhausted his compensation benefits and all other available resources, then, but only then, could he turn to other means of assistance.

Such compensation is not a complete safeguard

> against the hazard of unemployment. In periods of prolonged depression many workmen will exhaust their compensation benefits before they find other employment. This will hold true of some workmen even in periods of prosperity. Supplemental to unemployment compensation there will still be need for work relief for those whose compensation rights have been exhausted, as well as for workers who are outside of the compensation system. S. Rep. No. 628, 74th Cong. 1st Sess. 11 (1935)

The concept of unemployment compensation as a right

> . . . represented a radical departure from traditional methods of dealing with economic insecurity. The social insurance principle which the act embodied was new to the American public and to American law. Traditional community response to the needs of the employed had taken the form of charity — public and private. The Depression had made it clear to most people that this response was seriously deficient in two respects. Economically, the community lacked the fiscal organization and resources to meet the exigencies of mass unemployment on a charitable basis; and relief failed to stabilize consumer demand in the crucial incipient stages of a depression. Ethically — in terms of the community values involved — both the techniques of giving charity, particularly the "means" or "needs" test, and the psychological impact of receiving "charity," undermined the self-respect and independence of the unemployed. It was these economic and ethical deficiencies to which the unemployment compensation provisions of the act responded.
>
> The ethical aspect of this new community response lay in the social insurance principle that payments be made to an eligible claimant as a matter of right. Supporters and opponents of the Social Security Act were agreed that in this principle was the essential difference between unemployment compensation and charity. Understanding the phrase "payments as a matter of right" is

> important because it represents almost the entirety of the legislative history from which one can reconstruct how Congress hoped its fundamental objectives of supporting the dignity and independence of the unemployed would be realized. It appeared ubiquitously in legislative debates and political literature.[19] (footnotes omitted)

Clearly then, unemployment compensation was originally, and still is, intended to be separate from public assistance.

This fact is also supported in the legislative history of the AFDC program. The Aid to Dependent Children program, as it was originally called, was also created in the Social Security Act of 1935. The report of the Senate Committee on Finance, in discussing the aid to children provisions of H. R. 7260, the bill that was enacted, stated as follows:

> The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures of the security of children. *Unemployment compensation, for instance, will benefit many children in the homes of unemployed workers*; and even old-age pensions and old age benefits will in many cases indirectly aid children in families whose resources have been drained for the support of aged grandparents.
>
> *In addition, however, there is great need for special safeguards for many underprivileged children* . . . S. Rep. No. 628, *supra* at 16. (emphasis added)

From this language it is apparent that the Aid to Dependent Children program was not intended to assist the same category of children that would be benefited by unemployment compensation. The Aid to Dependent Children program was meant to cover children who were not members of families in which the father was eligible for unemployment compensation.

---

[19] Note, *Charity versus Social Insurance in Unemployment Compensation Laws*, 73 Yale L. J. 357, 358-360 (1963).

If the Court's interpretation of the statute and regulation is followed, however, an obvious result would be to shift drastically the burden of supporting families of unemployed fathers from the unemployment compensation program to the AFDC program in those cases where the father is eligible for both and the welfare benefits prove to be more advantageous.[20] The total onus would be forced upon the already strained welfare budgets, while accumulated unemployment compensation funds remain intact.

As a related consequence, those former employers of unemployed fathers who are required by law to contribute to the unemployment compensation trust fund would be unjustly benefitted. Since such fathers would be permitted to forego completely the unemployment compensation to which they are entitled, these employers would benefit over time through reduced rates of contribution.[21] It is highly doubtful that Congress intended such a potential gain to employers at the expense of the taxpayer.[22]

---

[20] In addition to weighing the monetary consideration, the individual would have to consider Medicaid and Food Stamp benefits which would be automatically available to members of his family as ANFC recipients.

[21] In Vermont, those employers who are required to contribute do so according to a rate schedule which is determined by the amount paid in to the trust fund versus the amount paid out in benefits. Basically the less paid out, the lower the rate. (Vermont's unemployment compensation program is established under the provisions of 21 V.S.A. §1301, *et seq*. Rates of employer contributions are established under 21 V.S.A. §§1324-1327.)

[22] In an affidavit filed in the District Court, (Appendix at 101), appellant Philbrook estimated, on the basis of statistics contained in an affidavit submitted by an employee of the Vermont Department of Employment Security, (Appendix at 94), that the cost to Vermont in additional ANFC benefits could be as high as $1 million in fiscal year 1975. Additionally, the federal share in Vermont could increase by approximately $2 million.

IV. The Social Security Act does not require that all needy families receive equal benefits according to the state standard of need.

The obvious difficulty presented by the factual situations in the case at bar is that the amounts of available unemployment compensation are less than the monetary standards applicable to the ANFC-UF program. Each family involved in this litigation would have received more on welfare than through unemployment compensation.[23]

The Court in the instant case has stated, at least implicitly, that economic hardship is a crucial factor, and that all needy families should receive at least the state's standard of need as established under the ANFC program. In explaining its option plan, the District Court said: "In either event, the option available to him will provide total income equal to or greater than the state standard of need" 368 F. Supp. at 218. But, as this Court has recognized in several of its decisions, there is no such requirement.

In *Dandridge* v. *Williams*, 397 U.S. 471 (1970), this Court upheld Maryland's maximum grant limitation which imposed an upper limit in AFDC benefits of $250 per month. Had this limitation not been imposed, large families would have received considerably more money since their state-computed standard of need substantially exceeded the maximum grant. Despite this fact, it was held that such maximums were not prohibited by the Social Security Act. While *Dandridge* dealt only with the question of relative economic hardships within the AFDC program, the reasoning is equally applicable to the instant case which deals with the amount of benefits available under the unemployment compensation program in relation to the ANFC standard.

In *Jefferson* v. *Hackney*, 406 U.S. 535 (1972), this Court upheld the percentage reduction system in effect in Texas.

[23] See n. 9, *supra* at 6.

Pursuant to that system, Texas had funded its AFDC program at only 75% of the standard of need, while its other Social Security Act programs were funded at 95% and 100%. Mr. Justice Rehnquist stated at 549-559:

> Similarly, we cannot accept the argument in Mr. Justice MARSHALL's dissent that the Social Security Act itself requires equal percentages for each categorical assistance program. The dissent concedes that a State might simply refuse to participate in the AFDC program, while continuing to receive federal money for the other categorical program . . . Nevertheless, it is argued that Congress intended to prohibit any middle ground — once the State does participate in a program it must do so on the same basis as it participates in every other program. Such an all-or-nothing policy judgment may well be defensible, and the dissenters may be correct that nothing in the statute expressly rejects it. *But neither does anything in the statute approve or require it.* (footnote omitted) (emphasis added)

In *Macias* v. *Finch*, 324 F. Supp. 1252 (N.D. Cal. 1970), *aff'd. sub nom. Macias* v. *Richardson*, 400 U.S. 913 (1970), plaintiffs challenged a federal regulation which defined an unemployed father under the AFDC program in terms of the number of hours worked. It was claimed, among other things, that the regulation was inconsistent with the federal statute (42 U.S.C. §607) which authorized the Secretary to establish standards for determining "unemployment." The plaintiffs claimed that a definition based on the number of hours worked was not permissible under the statute, and that a family's need must be taken into account. By disregarding need, the effect of the regulation was to deny AFDC eligibility to some families in which the father was working more hours than allowed, even though he was earning less than the state standard of need. The court rejected the challenge and

found that the regulation complied with Congressional intent and was within the scope of the statute.

In *Burr* v. *Smith, supra*, the District Court was faced with nearly an identical factual situation to the one at bar: AFDC benefits were denied solely by virtue of the unemployed father's eligibility for unemployment compensation. This resulted in economic hardship to the plaintiffs since their compensation benefits were less than the state standard of need. Despite this fact, the Court upheld the state regulation. The decision was based on an equal protection rationale, but clearly the Court would not have had to reach that issue if the Social Security Act required an equalization of benefits.

Therefore, if the Court's option plan in the instant case is premised on a presumed Congressional intent to equalize benefits among families in need, the plan must fail.

It should be noted at this point that, although the families involved in this case would have received more money from the ANFC-UF program, this is not necessarily typical.

The average monthly ANFC-UF payment in Vermont as of February, 1974[24] was $327.00.[25] The average weekly unemployment compensation payment as of January, 1974 was $74,[26] or $318.20 monthly,[27] for a male with two or more dependents.[28]

---

[24] The average payment for April, 1974 was $334.33. See n. 8, *supra* at 5.

[25] See Affidavit of Paul R. Philbrook (Appendix at 101)

[26] See Affidavit of Robert Saliba (Appendix at 94)

[27] To convert from the weekly amount to the monthly amount the weekly payment was multiplied by 4.3.

[28] The statistical analysis was based on a computer run which identified data relating to males with two or more dependents. Females, and males with no dependents or one dependent, were not considered in the analysis because it was assumed that they would not be eligible for the UF program. If a male had one dependent, it was assumed that that dependent was a wife.

Until July, 1974, the maximum weekly benefit was $77,[29] or $331.10 monthly. Thus, the average unemployment compensation payment for males with two or more dependents was very close to the maximum benefit available. Assuming the same is true nationwide, it appears that males in this category can expect to receive at least as much, if not more, from unemployment compensation than from the AFDC-UF program. As indicated by the chart[30] below, the maximum unemployment compensation payment is higher than the average AFDC-UF payment in all of the jurisdictions for which statistics are available. In fact, in six of these jurisdictions, the average unemployment compensation payment is in excess of the average AFDC-UF payment.

---

[29] The maximum weekly benefit was raised in July, 1974 to $86 weekly, or $369.80 monthly.

[30] **COMPARISON OF AVERAGE AND MAXIMUM MONTHLY UNEMPLOYMENT COMPENSATION PAYMENTS WITH AVERAGE AFDC-UF MONTHLY PAYMENTS, BY JURISDICTION**

Jurisdiction	AFDC-UF Payment per Family[a] (Average Monthly)	Monthly Unemployment Compensation Payment	
		Average[b]	Maximum[c]
1. California	$259.94	$254.56	$387.00
2. Colorado	259.85	288.44	421.40
3. Delaware	157.22	241.79	365.50
4. Dist. of Columbia	207.99	335.70	503.10
5. Guam	N/A	N/A	N/A
6. Hawaii	365.78	292.62	421.40
7. Illinois	328.37	258.60	451.50
8. Iowa	339.77	256.84	344.00
9. Kansas	251.92	234.95	339.70
10. Maryland	215.63	260.58	382.70
11. Massachusetts	305.65	277.14	580.50
12. Michigan	348.82	255.38	455.80
13. Minnesota	346.30	239.38	365.50

14. Missouri	N/A	N/A	N/A
15. Nebraska	N/A	N/A	N/A
16. New York	390.44	260.84	408.50
17. Ohio	214.96	249.83	490.20
18. Oklahoma	243.20	191.09	335.40
19. Oregon	257.88	216.03	326.80
20. Pennsylvania	260.31	297.99	447.20
21. Rhode Island	286.61	266.73	460.10
22. Utah	303.00	249.92	399.90
23. Vermont	334.33	262.30	362.80
24. Washington	288.99	264.32	369.80
25. West Virginia	210.83	193.50	460.10
26. Wisconsin	380.99	285.56	425.70

[a] *Public Assistance Statistics April, 1974, supra*, Table 5.

[b] Preliminary date of the U. S. Department of Labor as compiled by Division of Research and Statistics, Ohio Bureau of Employment Services, 6-25-74.

[c] *Comparison of State Unemployment Insurance Laws*, U. S. Department of Labor, Manpower Administration Rev. Sept. 1974.

CONCLUSION

On the basis of the foregoing arguments, it is respectfully requested that the decision of the District Court be reversed.

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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820

PAUL R. PHILBROOK, *etc.*,

Appellant,

v.

JEAN GLODGETT, *et al.*,

Appellees.

No. 74-132

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Appellant,

v.

JEAN GLODGETT, *et al.*

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

CONSOLIDATED BRIEF OF PLAINTIFF–APPELLEES

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1820

PAUL R. PHILBROOK, *etc.*,

Appellant,

v.

JEAN GLODGETT, *et al.*,

Appellees.

No. 74-132

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Appellant,

v.

JEAN GLODGETT, *et al.*

Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

CONSOLIDATED BRIEF OF PLAINTIFF–APPELLEES

QUESTIONS PRESENTED

1. Did the District Court have jurisdiction over the claims against the State of Vermont under 28 U.S.C. §§1343(3) and (4)?

2. Is it necessary for resolution of the issues presented by this case that jurisdiction be established over the U. S. Department of Health, Education and Welfare?

3. Does the Court have jurisdiction over the claims against the U. S. Department of Health, Education and Welfare under the Doctrine of pendent jurisdiction, 28 U.S.C. 1331, 28 U.S.C. 1361 or Section 10 of the Administrative Procedure Act?

4. Was the District Court correct in deciding that 42 U.S.C. §607(b)(2)(c)(ii) excludes families from Aid to Needy Families with Children benefits for only those weeks in which an otherwise eligible father actually receives unemployment compensation, and thereby provide the father with the option of rejecting unemployment compensation for which he is qualified in favor of higher ANFC-UF benefits?

5. Should the Court reach the issue of whether 42 U.S.C. §607(b)(2)(c)(ii) violates the Due Process clause of the Fifth Amendment when the issue was briefed and argued in the District Court but the lower court found it unnecessary to decide the issue?

6. Does 42 U.S.C. §607(b)(2)(c)(ii) violate the Due Process Clause of the Fifth Amendment insofar as it establishes two groups of equally needy and dependent children, and deprives one group of higher ANFC benefits solely due to the father's eligibility to receive state unemployment compensation, no matter how small the amount?

STATEMENT OF THE CASE

Subchapter IV (A) of the Social Security Act of 1935, 42 U.S.C. §§601-643, provides for grants to states for Aid and Services to Needy Families with Children. Section 601 of Title 42 authorizes an appropriation for the purpose of enabling the states to furnish financial assistance to needy dependent children and their parents or relatives with whom they are living "to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence *consistent with* the maintenance of continuing parental care and protection. . . .".

Until 1961, benefits under the AFDC program were limited to needy children who had been "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, . . .". 42 U.S.C. §606. In recognition of the fact that the limitation on eligibility for AFDC meant that "unemployed fathers are forced to desert their families in order that their families may receive aid" and that "there is no reason why a hungry child of an unemployed father should not be fed, as well as a child in other unfortunate circumstances,[1] the federal administration proposed in 1961 that AFDC eligibility be extended to children in intact families who

[1]Statement and Testimony of Abraham Ribicoff, Secretary of the U.S. Department of Health, Education and Welfare Hearings on H.R. 3864 and H.R. 3865 before the House Committee on Ways and Means, 87th Cong. 1st Sess. at 95 (1961).

were disadvantaged due to the unemployment of a parent. With some modifications, the Administration proposal became Section 407 of the Social Security Act, 42 U.S.C. §607. That provision gave the states the option of expanding the definition of "dependent child" to include a needy child who has been deprived of parental support or care by reason of the unemployment (as defined by the state) of a parent. Act of May 8, 1961, Pub. L. 87-31, 75 Stat. 75.

Originally enacted for a one year period, Section 407 was extended for five years by the 1962 amendments to the Social Security Act; extended again until June 30, 1968, and finally amended in its entirety and made permanent in 1968.

In the course of amending Section 407 in 1968,[2] Congress inserted a provision that had the effect of denying federal funds to reimburse states for payments made to families where the unemployed father was also receiving unemployment compensation.[3] Section 407(b)(2)(c)(ii) presently provides:

[2]Congress' primary concern in amending Section 407 was to correct the disparity in eligibility requirements that had resulted from the provision in Section 407 that "unemployment" be defined by the states. Section 407, as amended, empowers the Secretary of Health, Education and Welfare to define "unemployed." See H.R. Report No. 544, 90th Cong. 1st Sess. 108 (1967); S. Report No. 744, 90th Cong. 1st Sess. 160 (1967). See Levy, Lewis and Martin, Social Welfare and the Individual, 430-32, Foundation Press (1971). *Macias v. Finch*, 324 F.Supp. 1252, 1256-1257 (N.D. Cal. 1970), *Aff'd sub. nom. Macias v. Richardson*, 400 U.S. 913 (1970).

[3]As originally enacted, Section 407(b)(2)(C)(ii) provided for the denial of AFDC to any child "if, and for as long as, such child's father—

"(b) The provisions of subsection (a) (the expanded definition of 'dependent child') shall be applicable to a State if the State's plan approved under Section 602 of this title—

* * *

(2) provides—

* * *

(c) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section—

* * *

(ii) with respect to any week for which such child's father receives unemployment compensation under an unemployment compensation law of a State or of the United States."

The State of Vermont has implemented the disqualification provision by Welfare Regulation 2331.31 and interprets it to mean that if a father is merely eligible for unemployment compensation, no matter how small the benefit, the family is automatically and totally disqualified from ANFC-UF regardless of need.

This action was initiated by several Vermont families to challenge the constitutionality of the disqualification provision or, in the alternative, to construe it to apply only to the actual receipt of unemployment compensation. In each case, the amount of unemployment compensation available to the family was less than its

"(i) is not currently registered with the public employment offices in the state, or

(ii) receives unemployment compensation under an unemployment compensation law of a State or of the United States."

Act of Jan. 2, 1968, Pub. L. 90-248, Title II, Sec. 203(a), 81 Stat. 882.

entitlement under the ANFC-UF program.[4] The suit sought declaratory and injunctive relief against the Secretary of the U. S. Department of Health, Education and Welfare and the Commissioner of the Vermont Department of Social Welfare. Since it sought to enjoin the enforcement of a federal statute and a welfare regulation of statewide application, a three judge court was convened.

The Court sustained plaintiffs' claim that 42 U.S.C. §607(b)(2)(C)(ii) affords the family an option of rejecting unemployment compensation in favor of the higher ANFC-UF benefits, without reaching the claims based on the Fifth and Fourteenth Amendments. The court enjoined the state to advise AFDC applicants of their option to refuse unemployment benefits and directed the Secretary of Health, Education and Welfare to approve Vermont's AFDC program in accordance with the judicial construction of Section 607(b)(2)(C)

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[4]The differential in monthly benefits for each family is shown by a chart prepared by HEW for its brief and reproduced here:

	AFDC	UNEMPLOYMENT COMPENSATION
Glodgett	$239	$60
Derosia	394	56
Percy	410	172

Plaintiffs submitted a Memorandum Concerning Average Monthly Payments Under AFDC-UF and Unemployment Insurance in the District Court utilizing statistics based on fiscal year 1972. This study showed that the average AFDC-UF payments were greater than average UI payments in 16 of the 25 states participating in the UF program and that 81% of families receiving AFDC-UF lived in those 16 states. These statistics have been revised and appear in this brief as Appendix B.

(ii). In a supplemental Opinion and Order dated December 28, 1973, the Court held that the judgment would operate prospectively for the benefit of all others similarly situated.

On March 1, 1974, acting on a motion filed by the Department of Social Welfare, the court granted a conditional stay of its judgment with respect to similarly situated families. Under the terms of the stay, persons receiving unemployment compensation are permitted to apply for and receive supplemental financial assistance from the Department of Social Welfare so that the total amount of benefits equals the amount they would otherwise receive under ANFC-UF.

SUMMARY OF ARGUMENT

I.

The Department of Health, Education and Welfare takes the position that the merits of the dispute are properly before the court on Vermont's appeal making it unnecessary to resolve the question of pendent party jurisdiction left open in *Moor v. County of Alameda*, 411 U.S. 693. We concur that the complaint states a substantial federal question thus vesting the court with jurisdiction under 28 U.S.C. §1343(3). This gave the court pendent jurisdiction over the argument that the Vermont disqualification regulation conflicts with 42 U.S.C. §607(b)(2)(C)(ii). Plaintiffs argue in the alternative that should the Court find that the constitutional claim was not substantial in light of this Court's summary affirmance of *Burr v. Smith*, 322 F.Supp. 980

(W.D. Wash. 1971), then 28 U.S.C. §1343(3) and (4) provide an independent basis of jurisdiction to allege a violation of the Supremacy Clause.

In the event that the decision of the district court is reversed on the merits, plaintiffs urge the Court to reach the merits of the constitutional argument or at least resolve the jurisdictional issue prior to a remand. Plaintiffs disagree with the Secretary that the jurisdictional issue can be obviated by intervention under 28 U.S.C. §2403, and argue instead that subject matter jurisdiction is conferred by the doctrine of pendent jurisdiction, 28 U.S.C. §1331, 28 U.S.C. §1361 and Section 10 of the Administrative Procedure Act.

II

Plaintiffs urge the Court to apply the rule that a statute should be applied and not interpreted where its language is clear and unambiguous. *Helvering v. City Bank Farmers Trust Co.*, 296 U.S. 85, 89 (1935). The unvarnished language makes clear that Congress intended to prohibit concurrent receipt of both unemployment insurance and ANFC-UF and to permit the father of a family the option of rejecting unemployment compensation in order to secure higher welfare benefits for his children. This gains support from the fact that in Section 607(b)(2)(C)(i), Congress made express reference to persons "qualified to receive" unemployment compensation, demonstrating its awareness of the distinction.

Contrary to the assertions of the defendants, this construction does not produce "extraordinary results"

or results "plainly at variance with the purposes of the Social Security Act." Because the ANFC-UF program is based on need and unemployment compensation on concepts of insurance, there is no inconsistency in providing the father an option between the programs.

Moreover, even if the legislative history is consulted instead of clarifying the statutory language, it creates ambiguity where none existed before. Legislative history that obfuscates clear statutory language will not be given consideration. *Ex parte Collett*, 337 U.S. 55, 61 (1949).

III

Assuming the Court holds that Section 607(b)(2)(C)(ii) does not afford the family an option between the two programs, then the statute creates two classes of children, equally needy and dependent, one of which is denied the state-determined level of sustenance simply because their fathers are eligible for a certain type of income. This classification lacks rational relation to, and frustrates attainment of, the paramount goal of the ANFC program, namely the protection of children.

These children are, in effect, punished, not because of any conduct of their own, but solely because their fathers may receive insurance payments that bear no relation to family needs. *Levy v. Louisiana*, 391 U.S. 68, 72. Treating equally needy persons differently because of this factor is not rational, but arbitrary. *United States Department of Agriculture v. Moreno*, 93 S.Ct. 2821 (1973).

Plaintiffs also urge the Court to reach the constitutional issue even though it was not decided by the district court. The exigencies of the economic recession and the effect on children in families affected by the exclusion require that the issue be resolved as soon as possible.

ARGUMENT

I.

JURISDICTION OVER THE VERMONT DEPARTMENT OF SOCIAL WELFARE

(a) The district court had subject matter jurisdiction under *Hagans v. Lavine*, 415 U.S. 528, 94 S.Ct. 1372 (1974) over the claim that Vermont Welfare Reg. 2331.31 conflicts with 42 U.S.C. §607(b)(2)(C)(ii)

In *Hagans v. Lavine, supra*, the Court held that if a claim of constitutional deprivation is sufficiently substantial to confer jurisdiction under Section 1343(3), the federal courts have pendent jurisdiction to entertain a claim of conflict between federal and state law. 94 S.Ct. at 1378. As in *Hagans*, plaintiffs' amended complaint alleged that Section 607(b)(2)(C)(ii) and the state regulation violate the Fifth and Fourteenth amendments, respectively, or that the Vermont regulation conflicts with the federal enactment. If the primary jurisdiction conferring claim is substantial, *a fortiori*, the court is invested with power to consider the pendent statutory claim.

The standards governing application of the substantiality doctrine were reiterated in *Hagans, supra*. After observing that constitutional insubstantiality had been equated with such concepts as "essentially fictitious", "wholly insubstantial", "obviously frivolous", and "obviously without merit", the Court said:

> "The limiting words 'wholly' and 'obviously' have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U.S.C. §2281. A claim is insubstantial only if 'its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy.' " 94 S.Ct. at 1379.[5]

Whether the instant case presents a substantial constitutional question as judged by this standard must be assessed in light of this Court's summary affirmance of *Burr v. Smith*, 322 F.Supp. 980 (W.D. Wash. 1971) *aff'd* 404 U.S. 1027 (1972).

In *Burr*, the plaintiffs attacked the state regulation implementing the disqualification provision of Section

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[5] In *Hagans* the Court declined to re-examine the question of whether the substantiality doctrine is applicable "as a statement of jurisdictional principles affecting the power of a federal court to adjudicate constitutional claims...". Id. at 1379. As in *Hagans*, plaintiffs believe the equal protection claim they advances was "substantial" within the accepted definition.

607(b)(2)(C)(ii) as violating the equal protection clause of the Fourteenth amendment but made no attack on the federal statute itself. The court found a rational basis for the state regulation in the fact that, as it interpreted Section 607(b)(2)(C)(ii), the availability of federal matching funds required inclusion of the disqualification in the state plan. The court's rejection of the equal protection attack turned entirely on its belief that Section 607(b)(2)(C)(ii) required the disqualification of families in which the father received *or was eligible to receive* unemployment benefits. In this case, plaintiffs assert that if Section 607(b)(2)(C)(ii) is interpreted to exclude the latter group, it too is unconstitutional.

In *Burr*, the plaintiffs also argued that the state had an obligation to establish a wholly state funded plan to supplement benefits of unemployed fathers receiving unemployment benefits. The court rejected this equal protection argument and offered several justifications for different treatment. This court, in affirming without opinion, might have agreed that there were rational bases on which to excuse the state from creating and funding its own program. Manifestly, the instant case arises in a different context and *Burr* is not controlling. See *Bethea v. Mason*, 43 U.S.L.W. 2261 (D.Md. Nov. 12, 1974).

Moreover, it is conjectural whether an affirmance by summary action can ever be a basis for a finding of constitutional insubstantiality. *Dillenburg v. Kramer*, 469 F.2d 1222, 1225 (9th Cir. 1972). In *Edelman v. Jordan*, 94 S.Ct. 1347 (1974), Mr. Justice Rehnquist's majority opinion stated:

> "[T]hese three summary affirmances obviously are of precedental value in support of the contention that the Eleventh Amendment does not bar the relief awarded by the District Court in this case. Equally obviously they are not of the same precedental value as would be an opinion of this Court treating the question on the merits." 94 S.Ct., at 1359.

A panel of the Second Circuit has since held that this language privileges only the Supreme Court to disregard principles of *stare decisis*. *Doe v. Hodgson*, 500 F.2d 1206, 1207-8 (2d Cir. 1974). But the suggestion that a summary affirmance is not a treatment of the case on the merits[6] is a clear invitation to the lower federal courts to exercise a measure of discretion. This is underscored by the reference to Mr. Justice Brandeis' dissent in *Burnet v. Coronado Oil and Gas Co.*, 285 U.S. 393, 406-408 (1932), in which he said,

> "But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function." *Edelman v. Jordan*, 94 S.Ct. at 1359-60 n.14.

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[6]One scholar has estimated that the time spent in a summary affirmance is one half hour. Hart, Forward: The Time Chart of the Justices, 73 Harv.L.Rev. 84, 95 (1959). See generally articles cited in *United States ex rel. Epton v. Nenna*, 318 F.Supp. 809, 906 n.8 (S.D.N.Y. 1970) and *Doe v. Hodgson*, 478 F.2d 537 (2n Cir. 1973), cert. denied 414 U.S. 1096 (1973).

If the lower courts are bound by *stare decisis* to dismiss cases for want of a substantial federal question where a similar case has been summarily affirmed, it is difficult to see how "better reasoning" and the "process of trial and error" will have the opportunity to be tested. The trial courts are the crucibles in which the arguments must be developed.

If, for the reasons stated above, the Court has *power* to decide the pendent claim of statutory conflict, there can be little doubt that it did not abuse its discretion in doing so. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725-26 (1966). Where the claim sought to be appended raises an issue of federal and not state law, considerations of federalism are obviously of no concern. Note, Federal Jurisdiction over Challenges to State Welfare Programs, 72 Col.L.Rev. 1404, 1414 (1972).

(b) If the equal protection claim were held to be insubstantial under *Burr v. Smith, supra*, the court had jurisdiction under 1343(3) and (4) to determine the statutory conflict issue.

Even assuming the equal protection claim could be characterized as insubstantial, the Court had jurisdiction over plaintiffs' Social Security Act claims under 1343(3) and (4).[7]

[7]This issue was exhaustively briefed by the plaintiffs in *Hagans v. Lavine, supra*. In view of the plenary treatment of the subject there, and the apparent agreement among the parties that plaintiffs' complaint raised a substantial constitutional question, this discussion is a compendium.

First, it would appear that an asserted conflict between federal and state law itself deprives the plaintiff of a right secured by the Constitution within the meaning of Section 1343(3); i.e., the right to secure the benefit of the Supremacy Clause. *Connecticut Union of Welfare Employees v. White*, 55 F.R.D. 481, 486 (D.Conn. 1972). See *Townsend v. Swank*, 404 U.S. 282, 286 (1971); *Swift & Co., Inc. v. Wickham*, 382 U.S. 111, 125 (1965). *Cf. Hagans v. Lavine*, 94 S.Ct. 1372, 1377 n.5 (1974).

In any event, Section 1983 affords a remedy, and Section 1343(3) and (4) jurisdiction, over plaintiffs' claim that the Vermont regulation is in conflict with the Social Security Act. See *Hagans v. Lavine*, 94 S.Ct. at 1377 n.5 and authorities cited.

42 U.S.C. §1983 provides for a civil action to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution and laws of the United States. The addition of the words "and laws" in 1875 evidences a clear intent to embrace statutorily-based actions. See *City of Greenwood v. Peacock*, 384 U.S. 808, 829-30 (1966); *Bomar v. Keyes*, 162 F.2d 136, 139 (2d Cir.), *cert. denied*, 332 U.S. 825 (1947). The "right" plaintiffs seek to have vindicated is the right to have their eligibility for ANFC-UF determined and administered in accordance with federal law. *Rosado v. Wyman*, 397 U.S. 397, 427 (1970) (Douglas J. concurring). Note, Federal Judicial Review of State Welfare Practices, 67 Col.L.Rev. 84, 110 (1967).

28 U.S.C. §1343(4) provides for jurisdiction over claims brought under "Any Act of Congress providing for the protection of Civil Rights." Section 1983 is an

act which provides for the protection of civil rights by affording the means by which these rights may be vindicated in federal court. *Gomez v. Florida State Employment Service*, 417 F.2d 569 (5th Cir. 1969). Among the civil rights to be protected is the right to receive property in the form of ANFC benefits without unlawful deprivation. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552. In *Moor v. County of Alameda*, 411 U.S. 693 (1973), this Court, in the course of distinguishing Section 1983 from 1988, recognized that the former provision is an act which protects civil rights within the meaning of Section 1343(4).

The major obstacle to a finding of jurisdiction under Section 1343(4) is a reference in the House Report that Section 1343(4) was a "technical amendment" to "conform to amendments made to existing law by the preceding section of the bill." Since the preceding section related to suits for injunctive relief by the Attorney General to prevent violations of 42 U.S.C. §1985, it has been suggested that Section 1343(4) was intended to be the jurisdictional counterpart of Section 1985. Herzer, Federal Jurisdiction Over Statutorily-Based Welfare Claims, 6 Harv.Civ.Rights-Civ.Lib.L.Rev. 1, 16-18 (1970).

This argument is unpersuasive. In the first place, the preceding section was not enacted. Thus, unless Congress passed 1343(4) for no reason at all, it must have a broader application. Moreover, the reference in Section 1343(4) to "*Any* Act of Congress . . ." protecting civil rights is not limited to any particular substantive provision. In this regard, the broad language of Section 1343(4) must be compared to Sections

1343(1) and (2) where Congress made specific reference to Section 1985.

Finally, in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), this Court held that Section 1343(4) provided jurisdiction for a claim brought under 42 U.S.C. section 1982. If 1343(4) was merely a "technical amendment", it is difficult to see how it could have served as a basis for jurisdiction.

28 U.S.C. Section 1343(3) providing jurisdiction where the right asserted is under any Act of Congress "providing for equal rights," is an alternative basis for jurisdiction in this case. Section 1983 is such an Act.

Originally, substantive and jurisdictional provisions were combined in Section 1 of the 1871 Civil Rights Act. District and Circuit Courts had concurrent jurisdiction over all civil rights cases. The judicial revision of 1874 divided the substantive from jurisdictional sections. The substantive provision of Section 1 became Section 1983 and jurisdiction was vested in the district court under R.S. 563(12) and in the circuit court under 629(16). The district court provision authorized jurisdiction over claims to redress deprivations of "any right secured by any law of the United States." For no apparent reason, the circuit court provision contained the "equal rights" language now found in 1343(3).

With the abolition of the circuit court jurisdiction in 1911, the "equal rights" language was used to describe the jurisdiction of the district courts. The Senate Committee noted that it had "merged" the jurisdiction of the courts without suggesting that it was contracting the district courts' power to hear civil rights cases. S.Rep.No. 388, 61st Cong. 2nd Sess. Pt.1 at 15 (1910).

There is nothing in this history to suggest that Congress intended to fashion a federal remedy which, at least in part, could not be enforced in a federal court. Yet that is the consequence unless Section 1983 itself is regarded as an "Act of Congress providing for equal rights, . . .".

The 1871 Civil Rights Act owed its provenance to an apprehension on the part of the post-bellum Congress that states were not enforcing their laws with an equal hand. *Monroe v. Pape*, 365 U.S. 167, 172-180 (1961). Section 1983 was designed to secure equal treatment of all persons before the law. It was designated "An Act to Enforce the Provisions of the Fourteenth Amendment." As part of the 1871 legislation, it was intended to reach deprivations of federal rights beyond those growing out of racial discrimination. The Court should find jurisdiction under 1343(3) to preserve the primary purpose of the Section to afford a federal forum to private citizens to seek redress for violations of federal rights under color of state law. *See Mitchum v. Foster*, 407 U.S. 225, 239 (1972); *Monroe v. Pape, supra.*

II.

SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIM THAT 42 U.S.C. SECTION 607(b)(2)(C)(ii) VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

(a) Introduction

Should the Court hold that the District Court had jurisdiction over the statutory-conflict claim and uphold

its construction of Section 607(b)(2)(C)(ii), it will not be necessary to reach plaintiffs' claim that Section 607(b)(2)(C)(ii) violates the Fifth Amendment.[8] However, an adverse decision on the merits of the statutory claim will bring the constitutional issue to the fore.

The district court, applying the "rule of necessity," *Mayor of City of Philadelphia v. Educational Equality League*, 94 S.Ct. 1323, 1340-41 (1974) (White J. dissenting), declined to reach the issue of the constitutionality of Section 607(b)(2)(C)(ii). However, it held that it had subject matter jurisdiction to consider that claim against the Secretary of Health, Education and Welfare. *Glodgett v. Betit*, 368 F.Supp. 211, 215 (D.Vt. 1973).

In Section IV(a), post, plaintiffs urge the Court that if it should reverse the judgment of the three-judge court, it should reach and decide the constitutional issue. This would naturally require a decision of the jurisdictional issue.[9] Even if the Court should determine

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[8]In his brief, the Solicitor General has assured the Court that HEW will fully comply with the Court's mandate if the judgment of the three-judge court is affirmed. The absence of the Secretary of HEW as a party has not been deemed crucial even where his interpretation of the Social Security Act has been rejected by the court. *Carver v. Hooker*, 501 F.2d 1244 (1st Cir. 1974); *Francis v. Davidson*, 340 F.Supp. 351, (D.Md.) *aff'd* 409 U.S. 904 (1972).

[9]The Solicitor General suggests that if the case should be remanded, HEW would end the jurisdictional controversy by filing a motion to intervene under Rule 24(a) and 28 U.S.C. Section 2403. But it is not clear that the jurisdictional issue is thereby mooted.

Section 2403 permits intervention in suits "in which the United States, or any agency, officer or employee thereof is not

that the issue should first be dealt with on remand, expediency militates in favor of resolving the jurisdictional question now. There would be little point to re-convening the three judge court to consider difficult constitutional questions if subject matter jurisdiction is lacking. Conservation of judicial time would be served by prompt resolution of the question.

(b) Assuming the Court finds that the claim against the Vermont Regulation implementing 607(b)(2)(C)(ii) raises a substantial constitutional question, then the District Court had pendent jurisdiction over plaintiffs' claim that 607(b)(2)(C)(ii) violates the Fifth Amendment

The doctrine of pendent jurisdiction is justified by considerations of judicial economy, convenience and fairness to litigants. As defined by the Court in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966), federal courts have the *power* to hear federal and state claims

a party." It is true that the presence of a federal officer as a party to the suit does not preclude intervention by the United States, *Katzenbach v. Morgan*, 384 U.S. 641, 646 n.4 (1966), and intervention has been allowed both to the United States and to the official charged with administering the Act whose constitutionality has been drawn in question. *O'Keefe v. New York City Board of Elections*, 246 F.Supp. 978, 981 (S.D.N.Y. 1965). This suggests that the official administering the Act and the "United States" may have different perspectives and that jurisdictional issues concerning the former are not rendered academic by the intervention of the latter. Section 2403 also makes clear that having been made a party, the Secretary himself cannot voluntarily intervene.

in one action if (1) the federal claim is sufficiently substantial to confer subject matter jurisdiction on the court, (2) the federal and state claims derive from a common nucleus of operative fact, and (3) plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding. 383 U.S. at 725. The Court also reaffirmed "that pendent jurisdiction is a doctrine of discretion, not of plaintiff's rights."

As originally conceived, the doctrine extended the Court's power to hear related claims based on state law between the same parties. But it has been clearly established that the doctrine embraces pendent federal claims as well. *Hagans v. Lavine*, 94 S.Ct., *supra*, at 1385 n.14. The question of whether the doctrine permits the addition of a party when there is no independent basis of jurisdiction over him was expressly left undecided in *Moor v. County of Alameda*, 93 S.Ct. 1785, 1797-99 (1973).

The district court held that the Secretary of Health, Education and Welfare was a necessary party to the claim of constitutional deprivation, *Glodgett v. Betit*, 368 F.Supp, *supra*, at 215 n.7; and enjoined him to approve the Vermont plan in accordance with the court's interpretation of Section 607(b)(2)(C)(ii). The validity of the court's action depends upon the cogency of "pendent party" jurisdiction. It is apparent at the outset that assuming the power to "pendent parties" under Act III, Section 2, the court did not abuse its discretion in this case. Unlike *Moor*, *supra*, all the claims sought to be litigated are federal in nature and considerations of economy, convenience and fairness are served by joinder. Pendent jurisdiction is particularly

appropriate in resolving issues raised under the Social Security Act. *Rosado v. Wyman*, 397 U.S. 397, 404 (1970); Note, Federal Pendent Subject Matter Jurisdiction, 73 Col.L.Rev. 153, 165-166 (1973).

In *Moor*, the Court took note of the fact that many courts of appeals have recognized the "existence of judicial power to hear pendent claims involving pendent parties where "the entire action before the court comprises but one constitutional 'case' " as defined in *Gibbs*." 93 S.Ct. at 1797-98. Thus, pendent jurisdiction is a concept of subject matter jurisdiction over claims, not personal jurisdiction over parties. If the claims arise out of a common nucleus of operative fact under *Gibbs*, the fact that the two claims are asserted against different defendants is conceptually irrelevant. Fortune, Pendent Jurisdiction–The Problem of 'Pendenting Parties', 33 Univ.Pitts.L.Rev. 1, 2, 5, 12 (1972). The expansion of federal court jurisdiction finds an analogue in the related concept of ancillary jurisdiction, in the context of compulsory counterclaims under Rules 13(a) and (h) and in the context of third-party claims under Rule 14(a). *Astor-Honor, Inc. v. Grossett & Dunlap, Inc.*, 441 F.2d 627, 630 (2d Cir. 1971).

The "subtle and complex question" the Court perceived in *Moor* and referred to by HEW in its brief was pregnant with overtones of federalism since the claim sought to be appended arose under state law. The "far reaching consequences" apprehended are not present here. For, as Judge Holden said,

> "To the extent there is any doubt about the propriety of extending 1343(3) jurisdiction over the claim against the federal defendant here, the doubt should be resolved in favor of jurisdiction,

> to avoid the anomaly of denial of federal jurisdiction over a suit against a federal officer challenging the constitutionality of a federal statute involving social welfare, an area in which the federal courts have particular expertise. See Friendly, Federal Jurisdiction: A General View, 69-70; 121-122; Wright, Law of Federal Courts 110; Aguayo v. Richardson, 473 F.2d 1090, 1102 (2d Cir. 1973)." *Glodgett v. Betit*, 368 F.Supp. *supra*, at 215 n.7.

In light of the expansive view taken toward federal jurisdiction in *Gibbs* itself, the argument postulated by the County in *Moor* that it offends the notion that federal courts are courts of limited jurisdiction, is unpersuasive, particularly in the context of this case.[10]

Since all the claims in this case stem from a "common nucleus of operative fact", jurisdiction based on the federal claim against the State of Vermont provides a source of jurisdiction over the other constitutional claims raised. *Aguayo v. Richardson*, 473 F.2d 1090, 1102 (2d Cir. 1973), *cert. denied* 414 U.S. 1146 (1974); *Glover v. McMurray*, 361 F.Supp. 235, 241 (S.D.N.Y. 1973), *rev'd. on other grounds*, 487 F.2d 403 (2d Cir. 1973) (primary jurisdictional claim held insubstantial).

Assuming the Court had pendent jurisdiction over the claims asserted against the Secretary of Health,

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[10] The arguments advanced by Shakman, the New Pendent Jurisdiction of the Federal Courts, 20 Stan.L.Rev. 262 (1968), to the effect that pendent jurisdiction should not be expanded to its full potential within the definition of "case" in Art. III, Section 2, rests entirely on concerns of federalism. See *Almenares v. Wyman*, 453 F.2d 1075, 1084 n. 12 (2d Cir. 1971) *cert. denied* 405 U.S. 944 (1970).

Education and Welfare, it had personal jurisdiction and venue under 28 U.S.C. Section 1391(e). *Liberation News Service v. Eastland*, 426 F.2d 1379, 1382 n.5 (2d Cir. 1970); *Kletschka v. Driver*, 411 F.2d 436 (2d Cir. 1969); *Kelley v. Metropolitan Co. Board of Education*, 372 F.Supp. 528 (M.D. Tenn. 1973); *Macias v. Finch*, 324 F.Supp, 1252, 1254-55 (N.D. Cal) *aff'd. sub nom. Macias v. Richardson*, 400 U.S. 913 (1970); *Powelton Civic Home Owners Ass'n. v. Dept. of Housing and Urban Development*, 284 F.Supp. 809, 833-834 (E.D.Pa. 1968); and Prof. Jo Desha Lucas' comment in Supplement to 1 J. Moore, Federal Practice ¶0.142(7) at 140-41 (1973 Supp.); 2 J. Moore, Federal Practice, ¶4.29 at 84-85 (1973 Supp.) and cases cited.

(c) Assuming the primary jurisdiction conferring claim was insubstantial, the Court had subject matter jurisdiction over plaintiffs' claim that 42 U.S.C. Section 602(b)(2)(C)(ii) violates the Fifth Amendment under 28 U.S.C. Section 1331

In its brief,[11] the government notes that although the plaintiffs alleged jurisdiction under 28 U.S.C. Section 1331, they conceded that their individual claims did not exceed $10,000. Asserting that aggregation is barred under *Snyder v. Harris*, 394 U.S. 332 (1969) and *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), the government argues the court is without jurisdiction under 1331. This fails to take into account the "defendants viewpoint" theory and ignores plaintiffs' argument that their claims are "common and undivided", permitting aggregation.

[11]Brief of HEW, p. 11, note 2.

(i) The jurisdictional amount is satisfied if the amount of the matter in controversy is determined from the defendant's viewpoint

The object of the jurisdictional amount requirement of 1331 is to keep trivial lawsuits out of the federal courts thereby reducing court congestion. S.Rep. No. 1830, 85th Cong. 2d Sess. at 3-4 (1958); 1958 U.S. Code, Cong. and Admin. News pp. 3099, 3101; Wright, The Law of Federal Courts, ¶32, P. 107 (2d ed. 1970). That interest may be fully served by asking what is actually involved in the case, a common sense approach which would permit viewing the controversy from the viewpoint of either plaintiff or defendant. "[P]articularly where purely injunctive relief is sought, the amount in controversy may be measured by either 'the value of the right sought to be gained by the plaintiff . . . [or] the cost [of enforcing that right] to the defendant.'" *Tatum v. Laird*, 444 F.2d 947, 951 (D.C.Cir. 1971), *rev'd on other grounds*, 408 U.S. 1 (1972). *See also National Welfare Rights Organization v. Weinberger*, 377 F.Supp. 861, 886 (D.D.C. 1974); *Miller v. Standard Fed. Savings & Loan Ass'n.*, 347 F.Supp. 185 (E.D. Mich. 1972).

Although this Court has never squarely decided the question, in *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972), in the course of dismissing an original action, the Court held that the case would satisfy the jurisdictional requirements for an original proceeding in

district court. Mr. Justice Douglas cited authority supporting adoption of a rule which would measure the jurisdictional amount from the point of view of either the plaintiff or defendant. 406 U.S. at 98. *Ronzio v. Denver & R.G.W.R. Co.*, 116 F.2d 604, 606 (10th Cir. 1940); C. Wright, The Law of Federal Courts 117-119 (2d ed. 1970); Note, Federal Jurisdictional Amount: Determination of the Matter in Controversy, 73 Harv. L.Rev. 1369 (1960).

This suit seeks declaratory and injunctive relief against the Secretary of Health, Education and Welfare in his administration of the ANFC-UF program. It is not possible to grant relief for only one recipient and the result would be the same if only one individual had brought the suit. In any event, the district court made its judgment applicable to all persons similarly situated to the plaintiffs.

Should plaintiffs eventually prevail, the Secretary must approve the plans of all states participating in the ANFC-UF program to permit persons eligible for unemployment insurance to exercise an option for ANFC-UF instead. Furthermore, the Secretary has repeatedly said that if the Court upholds the district court decision, he will administer the statute in accordance with the Court's interpretation. The amount of the matter in controversy is, therefore, the amount of federal funds that will be made available to the states as matching funds for the ANFC-UF program. Viewed from the defendant's standpoint, it is beyond doubt that the amount in controversy exceeds $10,000.

(ii) The Court has subject matter jurisdiction over the claims against the Secretary of Health, Education and Welfare under 28 U.S.C. Section 1331 by aggregating the plaintiffs' claims

Section 1331 also provides a source of jurisdiction for plaintiffs' claims against the Secretary if the plaintiffs are permitted to aggregate their claims. In *Troy Bank v. G. A. Whitehead Co.*, 222 U.S. 39 (1911), the Court stated the rule which, to this day, governs when individual claims may be aggregated to meet the jurisdictional amount:

> "When two or more plaintiffs, having separate and distinct demands, unite for convenience and economy in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a single title or right, in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount." 222 U.S. at 40-41.

The plaintiffs herein do not seek a *pro rata* distribution from the Social Security trust fund. Indeed, they could not do so since the Secretary is under no duty to distribute any part of the trust fund directly to them. Should the plaintiffs prevail, the state will have to expend a sum of money which will be reimbursed in part by HEW.[12] Thus, it is not the individual claims of

[12]The case was initially brought on behalf of the named plaintiffs and all others similarly situated. Plaintiffs sought certification as a class action. The court denied this aspect of the relief sought on the ground that plaintiffs had not sought formal certification. Acting on a post-judgment motion of plaintiffs, the

the plaintiffs which are at issue, but the availability of matching funds to reimburse the state. The Secretary, although concerned that the statute might be held unconstitutional, has no interest in the apportionment of the money among the families of the unemployed. Under these circumstances, the plaintiffs are asserting a "common and undivided" interest in the expenditure of the funds in question, and this collective interest is sufficient to meet the jurisdictional test. See, e.g., *Troy Bank v. Whitehead*, 222 U.S. 39 (1911); *Pinel v. Pinel*, 240 U.S. 594 (1916).

Nothing in *Snyder v. Harris, supra*, or *Zahn v. International Paper Company, supra*, is to the contrary. While the Court in *Snyder* held that separate and distinct claims of class members may not be aggregated to achieve the requisite amount in controversy, the Court re-affirmed the fundamental principle authorizing aggregation where "plaintiffs unite to enforce a single title or right in which they have a common and undivided interest." 394 U.S. at 335. *Zahn* simply extended the holding of *Snyder* to cases in which some of the class members with separate and distinct claims allege damages in excess of the jurisdictional amount.

In *Bass v. Rockefeller*, 331 F.Supp. 945 (S.D.N.Y. 1971) *vacated and cause remanded on other grounds*,

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Court held that the decision would inure to the benefit of all families similarly situated. See *Galvan v. Lavine*, 490 F.2d 1255 (2d Cir. 1973). The aggregation doctrine predated the creation of class actions. *Zahn v. International Paper Co.*, 94 S.Ct. at 509, and are not interdependent devices. The defendants have consistently argued that the cost to the State of Vermont and HEW would be greatly in excess of $10,000.

464 F.2d 1300 (2d Cir. 1971), the court permitted the plaintiffs to aggregate their claims in a suit challenging a New York statute reducing the number of persons eligible for Medicaid which the state sought to implement without prior approval from HEW. After noting that in *Snyder* the Court had instructed the inferior federal courts to apply settled principles of law in determining the matter in controversy, the Court set forth two tests to aid analysis:

> "The interest in distribution test indicates that a common and undivided claim exists when "the adversary of the class has no interest in how the claim is to be distributed among the class members (citation omitted). The second test, the essential party test, allows aggregation of class claims when none of the class members could bring suit without directly affecting the rights of his co-parties." 331 F.Supp. at 950

The Court held those tests were met by the joint interest of the medically needy to proper administration and preservation of the Medicaid funds. See *New Jersey Welfare Rights Organization v. Cahill*, 483 F.2d 723, 725 n.1 (3rd Cir. 1973); *Yanez v. Jones*, 361 F.Supp. 701 (D. Utah 1973); *Bass v. Richardson*, 338 F.Supp. 478, 482 (S.D.N.Y. 1971); *Broenan v. Beaunit Corp.*, 305 F.Supp. 688 (E.D. Wis. 1969) *aff'd* 440 F.2d 1249 (7th Cir. 1970). See generally, Coiner, Class Actions: Aggregation of Claims for Federal Jurisdiction, 4 Memphis State Univ.L.Rev. 427 (1974).

A case of first importance in applying these principles is *Berman v. Narragansett Racing Ass'n, Inc.*, 414 F.2d 311 (1st Cir. 1969) *cert. denied* 396 U.S. 1037 (1970). *Berman*, decided after *Snyder*, concerned a claim by owners of prize winning race horses that

they were entitled to a share of the 'breakage' money, which consisted of the odd cents on a winning ticket. The horse owners claimed that under an agreement with the track, they were to receive a certain percentage of the track's annual share of the purses. The unpaid 'breakage' accumulated over the years, was a sum of several million dollars.

The First Circuit applied the *Pinel* formula and held that the matter in controversy was not the individual claims of the plaintiffs but the recovery of the fund under the alleged agreement. Central to the holding was the fact that there were no contractual rights between the defendants and the individual purse winners.

It was also significant that the plaintiffs had made no specific claims for individual payment: If the plaintiffs were successful in their claim, a distribution formula would have to be established by the court before the members would share individually. By the same token, in the instant case no recovery can be had unless the court declares Section 607(b)(2)(C)(ii) unconstitutional. In that event, the state would have to make disbursements to otherwise eligible families that elected to receive ANFC-UF. HEW would reimburse the state monthly with matching funds. The relief sought from the federal defendant is therefore release of matching funds via reimbursement and not payment of individual claims. This brings the instant case squarely within the *Berman* rationale. As the court said:

> "In cases contemplating the distribution of a fund, it has long been settled that one factor of considerable importance on the issue of whether the plaintiffs' interests are aggregable is whether the defendant has an interest in how the fund will

> be apportioned if plaintiffs prevail. (cases omitted). Here, the defendants' only obligation would be to see that 44.7% of their share of the 'breakage' is made available to the class. Under any formula that is finally adopted defendants' liability is the same. The interests of the plaintiffs *vis a vis* the matter in controversy are 'common and undivided' and the fact that their interests are separable among themselves is immaterial." (citations omitted) 414 F.2d, *supra*, at 316.

(d) The District Court had jurisdiction over the plaintiffs' claim that Section 607(b)(2)(C)(ii) is unconstitutional under the Mandamus Statute, 28 U.S.C. Section 1361

The Mandamus and Venue Act of 1962 was intended to remedy the anomaly created by the rule that the district courts, other than in the District of Columbia, lacked jurisdiction to issue mandamus against federal officers. *McIntire v. Wood*, 11 U.S. (7 Cranch) 504 (1873); *Kendall v. U. S. ex rel. Stokes*, 37 U.S. (12 Peters) 524 (1838). See 2 J. Moore, Federal Practice ¶4.29 at 1210-11 (1970).

28 U.S.C. Section 1361 provides:

> "Action to compel an officer of the United States to perform his duty—the district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

The key questions in applying the statute are whether there is a "duty owed to the plaintiff" by the federal

defendant and whether the action is "in the nature of mandamus."

Taking the latter question first, it is clear that even under traditional concepts of mandamus, the Secretary has a ministerial duty to approve state plans. 42 U.S.C. Section 602(b).[13] The real issue is whether it makes a difference that the relief requested is contingent upon a finding that Section 607(b)(2)(C)(ii) is unconstitutional.

Even under pre-1962 concepts of mandamus jurisdiction, an arbitrary and unconstitutional abuse of power was remedial by mandamus. In *Garfield v. United States ex rel. Goldsby*, 211 U.S. 249 (1908), the plaintiff brought an action for a writ of mandamus against the Secretary of the Interior to compel him to restore him as a member of the Chickasaw Nation which would entitle him to an equal undivided interest in certain land. Plaintiff alleged that he had been enrolled as a member but that his name had been stricken from the rolls without notice and without his knowledge. He alleged that this action was unauthorized, beyond the power of the Secretary and deprived him of valuable rights without due process of law.

The Court held that mandamus is a proper remedy where the federal official has acted wholly without authority of law and discussed at length the constitutional requirements of notice and opportunity to be heard before rights and privileges may be withdrawn. Although the Court held that the Secretary lacked authority to strike previously acquired rights without

[13]42 U.S.C. Section 602(b): "The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, . . .".

notice and hearing, it is clear that the decision has a constitutional dimension. If all the decision stood for was that the Secretary had exceeded his powers under the statute, it would have been superfluous to explore the due process question.

Should the Court determine that the mandatory exclusion provision violates the due process clause of the Fifth Amendment, it is surely within the Court's power to compel the Secretary to perform his ministerial duty to approve the Vermont plan without that condition. *Workman v. Mitchell*, 502 F.2d 1201, 1205-1206 (9th Cir. 1974); *Smith v. McNamara*, 395 F.2d 896 (10th Cir. 1968); *cert. denied*, 394 U.S. 934 (1969); *National Ass'n. of Government Employees v. White*, 418 F.2d 1126 (D.C. Cir. 1969); *Long v. Parker*, 390 F.2d 816 (3rd Cir. 1968); *Walker v. Blackwell*, 360 F.2d 66 (5th Cir. 1966); *Ashe v. McNamara*, 355 F.2d 277 (1st Cir. 1965); *Kelley v. Metropolitan Co. Board of Education*, 372 F.Supp. 528, 539 (M.D.Tenn. 1973); *Cortright v. Resor*, 325 F.Supp.]. 797 (E.D.N.Y. 1971) *rev'd on other grounds*, 447 F.2d 245 (2d Cir. 1971) *cert. denied* 405 U.S. 965 (1972); *Murray v. Vaughn*, 300 F.Supp. 688 (D.R.I. 1969); *Carey v. Local Board No. 2*, 297 F.Supp. 252 (D.Conn. 1969), *aff'd.* 412 F.2d 71 (2d Cir. 1969).

In any event, the statutory language and the legislative history indicate that the power granted to the federal courts by Section 1361 is broader than the power that had previously existed to issue writs of mandamus. Byse and Fiocca, Section 1361 of the Mandamus and Venue Act of 1962 and 'Nonstatutory' Review of Federal Administrative Action, 81 Harv.L. Rev. 308 (1967).

The second requirement that there be a "duty owed to the plaintiff" is also satisfied. This is essentially a question of standing. Byse & Fiocca, 81 Harv.L.Rev. at 316. As this court said in *Garfield v. United States ex rel. Goldsby*, *supra*, *any person* who will sustain personal injury by the refusal to perform a plain official duty may have a mandamus. 211 U.S. at 261-262.

Because of the two-tiered statutory pattern of the ANFC program, the immediate effect of a mandamus to the Secretary would be to release matching funds to the state. Nevertheless, the injury resulting from the Secretary's approval of the Vermont plan with the disqualification provision results in direct financial injury to the plaintiffs. Because the ANFC-UF program is only viable as long as federal funding is available, 33 V.S.A. Section 2701(1)(c)(3), the Secretary's approval of the plan is a *sine quo non* to any payments by the state to recipients. The Secretary's action thus has a direct and consequential bearing on the individual recipient.

The plaintiffs do not seek to assert the rights of the state against HEW. Albert, Standing to Challenge Administrative Action: An Inadequate Surrogate for Claim for Relief, 83 Yale L.J. 425, 465-468 (1974). *But see Kelley v. Metropolitan County Board of Education*, 372 F.Supp. 528, 534-535 (M.D.Tenn. 1973). There can be no question that the plaintiffs have suffered economic injury because of the disqualification provision and they are within the zone of interests sought to be protected by 42 U.S.C. Section 607 and the Fifth Amendment. *Ass'n. of Data Processing Service Organizations v. Camp*, 397 U.S. 16 (1970); *Barlow v. Collins*, 397 U.S. 159 (1970).

(e) The Court has jurisdiction under Section 10 of the Administrative Procedure Act, 5 U.S.C. Section 702.

The issue of whether Section 10 of the Administrative Procedure Act confers jurisdiction is a perplexing one. See *Aguayo v. Richardson*, 473 F.2d 1090, 1101-1102 (2d Cir. 1973) *cert. denied* 414 U.S. 1146 (1974). The lack of clarity of the statutory language and the absence of any meaningful discussion in the legislative history mean that the traditional modes of ascertaining legislative intent are unavailing. See Byse & Fiocca, Section 1361 of the Mandamus & Venue Act of 1962 and "Nonstatutory" Judicial Review of Federal Administrative Action, 87 Harv.L.Rev. 308, 326-328 (1967. In this vaccuum, policy considerations should govern, and policy favors construing Section 10 as a grant of jurisdiction. Jaffe, Judicial Control of Administrative Action 165 (1965); Davis, Administrative Law Treatise, Section 23.02 (Supp. 1970); Byse & Fiocca, 81 Harv.L.Rev. at 329-331. By passage of the Mandamus & Venue Act of 1967, Congress evidenced its intent to decentralize nonstatutory judicial reviews by permitting suits to be brought outside the District of Columbia. As Professor Byse points out, construing Section 10 as a jurisdictional grant does not subject any additional administrative action to judicial review, but would permit a litigant to bring his suit in a local federal court thus giving effect to Congress' expressed intent, albeit in a different context. Byse & Fiocca, p. 330-331. This also has the desireable effect of obviating the jurisdictional amount requirement in actions against federal officials. Id.

On several occasions, this Court has entertained suits that could only have rested on Section 10. *Shaughnessy v. Pedreiro*, 349 U.S. 48 (1955); *Rusk v. Cort*, 369 U.S. 367 (1962) and *Flast v. Cohen*, 392 U.S. 83 (1968). While these cases did not discuss the issue and therefore cannot be said to be dispositive, they are supportive of the view that sound policy objectives would be served by interpreting Section 10 as a jurisdictional statute.

III.

THE COURT PROPERLY HELD THAT 42 U.S.C. SECTION 607(b)(2)(C)(ii) PROVIDES FAMILIES WITH AN OPTION AND EXCLUDES FAMILIES FROM ANFC-UF BENEFITS FOR ONLY THOSE WEEKS IN WHICH AN OTHERWISE ELIGIBLE FATHER ELECTS TO RECEIVE UNEMPLOYMENT COMPENSATION

(a) The statutory language is clear, making it unnecessary to explore the purposes of the statute by resorting to the legislative history[14]

It is well settled that where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. *Osaka Shoshen Kaisha Line v. United States*, 300 U.S. 98, 101 (1937);

[14]Of course, if this Court agrees with plaintiffs' argument set out in Section III(b) that the legislative history is inconclusive, it becomes unnecessary to decide whether it would be improper to consider that history.

Kuehner v. Irving Trust Co., 299 U.S. 445, 449 (1937); *Helvering v. City Bank Farmers Trust Co.*, 296 U.S. 85, 89 (1935); *United States v. Shreveport Grain and Elevator Co.*, 287 U.S. 77 (1932); *Wilbur v. United States, ex rel. Vindicator Consolidated Gold Mining Co.*, 284 U.S. 231, 237 (1931). The District Court held that "It is clear from the language of the statute that the disqualifying factor is actual payment, rather than mere eligibility for unemployment compensation." *Glodgett v. Betit*, 368 F.Supp. 211, 217 (D.Vt. 1973). The Court is not confronted, as it was in *Richards v. United States*, 369 U.S. 1, 11 (1962), with an inherently ambiguous phrase such as "law of the place;" or with imprecise words such as "restrain or coerce," at issue in "*NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 184 (1967); or language which "does not make clear its intended scope." *Allen v. State Board of Elections*, 393 U.S. 544, 570 (1969).

The Solicitor General relies on *United States v. American Trucking Associations*, 310 U.S. 534 and *Cass v. United States*, 417 U.S. 72, for the proposition that there is no "rule of law" which forbids the Court from turning to extrinsic aids which are clearly relevant to a construction of the words in question. Brief of HEW p. 15.

American Trucking began its discussion by saying that there is no more persuasive evidence of the purpose of a statute than the words chosen by the legislature to make its purpose known. "In such cases," the Court said, "we have followed their plain meaning." It is where the meaning has led to absurd or futile results, or unreasonable ones plainly at variance with

the policy of the legislation as a whole that has taken the Court beyond the literal words. 310 U.S. at 543.

Cass has not wiped out all vestiges of that doctrine. In footnote 5, the Court considered arguments that the statutory language was clarified in other portions of the Act and in other statutes with similar provisions. The Court found that these references did not remove the ambiguity inherent in the statutory language. But the Court made it unmistakeably clear that its perusal of other related statutory sections would precede resort to the legislative history, and that if the language was plain and unambiguous that second step need not be reached.

In *Cass* the Court observed that the controlling consideration is to ascertain what Congress intended. If this can be gleaned from the face of the statute, the language should be gi en its plain meaning. *United States v. American Trucking Associations*, 310 U.S. at 543, and cases cited note 18. As the Court said in *Helvering v. City Bank Co.*, 296 U.S. at 89, "We are not at liberty to construe language so plain as to need no construction, or to refer to committee reports where there can be no doubt of the meaning of the words used." See also, *United States v. Shreveport Grain and Elevator Co.*, 287 U.S. 77, 83.

The plain meaning of Section 607(b)(2)(C)(ii) is that Congress was concerned that a family could receive *concurrent* payments of unemployment compensation and ANFC-UF. See *Macias v. Finch*, 324 F.Supp. 1252, 1257 (N.D.Cal. 1970). Therefore, it made clear that for any week in which the father *received* unemployment insurance, the family could not also receive ANFC-UF. This left it open to the individ[illegible] to reject his unemployment benefits if the ANFC was higher.

Internal evidence that Congress was capable of making a distinction between "receipt" of unemployment compensation and "eligibility" for benefits is found in another subsection of the same statute, enacted on the same day as Section 607(b)(2)(C)(ii). Section 607(b)(i)(C) sets forth the qualifications of prior attachment to the labor force required for state participation in the AFDC-UF program. A family will qualify only if the father (1) has six or more quarters of work in any thirteen calendar quarter period ending within a year of applying for ANFC or (2) if he received *or was qualified to receive* unemployment compensation within the meaning of subsection (d)(3) of Section 607. Section 607(d)(3)(A) states that an individual shall be deemed "qualified for unemployment" if "he would have been eligible to receive such unemployment "compensation upon filing application . . ."

The failure of Congress to utilize similar language in Section 607(b)(2)(C)(ii) or to incorporate Section (d)(3)(A) by reference suggests that a family was to be excluded from ANFC-UF only for each week in which the father actually received unemployment compensation.

This was a view originally shared by the Department of Health, Education and Welfare.[15] Thus, in footnote two of its initial brief in the District Court, the government unequivocally stated:

> "It is the receipt of unemployment benefits and not merely eligibility for such benefits which is the

[15]See brief of the Department of Health, Education and Welfare dated August 11, 1972, p. 7 note 2, and p. 17.

> operative factor here; Section 607(b)(2)(C)(ii) turns on receipt of unemployment compensation, not eligibility for such benefits."

The Court relied on this statement as accurately reflecting the Government's position. *Glodgett v. Betit*, 368 F.Supp., *supra*, at 217.

HEW seeks to "clarify" its position by arguing that Congress did not refer to (d)(3) because it did not want to penalize the father during the waiting period between application and receipt of unemployment benefits. Brief of HEW, pp. 15-17 n.4. However, (d)(3) would not require that result. Read in conjunction with b(2)(c)(ii), it would make a family ineligible for ANFC for any week in which the father received his unemployment benefit or would have received it had he filed his application. This would have achieved precisely the result which the government claims was intended by Congress.

Moreover, the Secretary argues elsewhere that the phrase "qualified to receive" be read into b(2)(C)(ii). Brief of HEW p. 22. This is inconsistent with his position in footnote 4.

The state takes a different approach. It postulates a *conceptual* distinction between b(2)(C)(i), which limits eligibility to individuals with a prior attachment to the work force, and b(2)(C)(ii) which does not. Since the latter provision has nothing to do with prior work history, the state argues, there was no need to speak in terms of "qualifications" to receive benefits. Brief of State of Vermont, p. 18. This is a *non sequitor*.

The problem with the state's hypothesis is that the definition in d(3) would squarely fit the families it claims Congress intended to exclude: those in which the

father would have been eligible if he filed an application. The state admits this in footnote 11 of its brief.

The state also argues that its interpretation is compelling, "especially in view of the section's traditional interpretation." But traditionally, the section permitted supplementation of unemployment benefits, not total exclusion. Neither logic nor tradition supports the state's argument.

The defendants urge the Court to apply the rule that it will look beyond the words where a literal reading would lead to absurd or futile results or an unreasonable one "plainly at variance with the policy of the legislation as a whole." *Perry v. Commerce Loan Co.*, 383 U.S. 392, 400 (1966). Brief of State of Vermont pp. 11-12. However, the literal reading given the statute by the court produces none of these.

Ensuring a subsistence income for all children made needy due to the unemployment of their fathers can hardly be considered absurd or futile. Nor does the court's construction conflict with the intent of other relevant provisions of the same statutory scheme. The defendants rely on 42 U.S.C. Section 602(a)(7) and its implementing regulations to support their thesis that an irreconcilable conflict results from the court's application of the statute. The conflict said to arise is illusory.

42 U.S.C. Section 607(a)(7) simply instructs the state agency to take income and other resources into consideration in determining the need of applicants for AFDC. But receipt of unemployment compensation works a complete disqualification from the program regardless of need. As the state pointed out in footnote 14 of its Jurisdictional Statement, unemployment

compensation as a resource in *sui generis* in requiring automatic disqualification from AFDC benefits. The key phrase in 607(a)(7) is "in determining need." Defendants would read this language out of the statute.

The reference to the Handbook of Public Assistance Administration on pages 14 and 15 of the state's brief all predate the enactment of Section 607(b)(2)(C)(ii) in 1968. Therefore, it is not surprising that unemployment compensation is referred to as a resource. From 1961 to 1968 it was optional with the states to supplement unemployment compensation with AFDC payments. It must also be remembered that where a family is eligible for ANFC due to the death, continued absence or disability of a parent, unemployment compensation is still considered a resource for determining the amount of the grant.

The superseding regulations in 45 C.F.R. 233.20(a)(3)(ii)(c) and 45 C.F.R. 233.20(a)(3)(ix), cited by the Commissioner, are similarly inapposite. The scope of those regulations is placed in proper perspective by 45 C.F.R. 233.20(a):

> "*Requirements for State Plans.* A State Plan for OAA, AFDC, AB, APTD, or AABD must, as specified below:
>
> (1) *General.* Provide that the determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way, except where otherwise specifically authorized by Federal Statute."

Since unemployment compensation is statutorily treated differently from other resources in that recipients are

disqualified regardless of need, these regulations do not apply.

The category of Dependent Children of Unemployed Fathers is separately treated in 45 C.F.R. 233.100. Those regulations lend no support to the appellants' position. 45 C.F.R. 233.100(a)(5)(ii) tracks the statutory language in providing for the denial of aid to a dependent child "with respect to any week for which such child's father *receives* unemployment compensation. . .". The regulations also emphasize the difference between the statutory language in Section 607(b)(1)(c) and 607(d)(3) defining the term "qualified for unemployment." 45 C.F.R. 233.100(a)(3)(ii) and 45 C.F.R. 233.100(a)(3)(v).

Finally, the state argues that the District Court's reading of Section 607(b)(2)(c)(ii) produces extraordinary results by (1) shifting the burden of supporting unemployed fathers and their families from employer contributions to welfare aid, and (2) by unjustly enriching employers by reducing their rate of contribution to the unemployment fund over a period of time.[16]

But the incidental effects on the unemployment insurance fund are not "extraordinary results" when the differing purposes of the two programs are taken into consideration. "Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed." Report of Senate Finance

[16] In its jurisdictional statement, the state also argued that the court's interpretation would encourage "program shopping". Apparently, the state has abandoned this argument.

Committee, No. 628 74th Cong. 1st Sess. p. 11 (1935). As this Court recently said in *California Human Resources Dept. v. Java*, 402 U.S. 121, 130 (1971):

> "It is true, as appellants argue, that the unemployment compensation insurance program was not based on need in the sense underlying the various welfare programs that had their genesis in the same period of economic stress a generation ago. A kind of "need" is present in the statutory scheme for insurance, however, to the extent that any "salary replacement" insurance fulfills a need caused by lost employment, the objective of Congress was to provide a substitute for wages lost during a period of unemployment not the fault of the employee."

The Commissioner argues that it was originally the intention of Congress, as revealed in the legislative history of 1935, that unemployment compensation would be the first line of defense for the unemployed, providing a subsistence income without the necessity of resorting to relief. But the state acknowledged in its Jurisdictional Statement that the distinction was "somewhat obscured" in 1961 when Congress expanded the definition of "dependent child" with the express purpose of including the children of the unemployed. Jurisdictional Statement of the State of Vermont, pp. 17-18. The mere fact that in 1935 Congress recognized that unemployment compensation would incidentally benefit many children in the homes of unemployed workers does not mean that in 1968 it would brook a harsh determination against those children.[17]

[17]Aside from the fact that it is sophistry to speak in terms of "shifting the burden of support" when the purposes of the programs are dissimilar, it should be remembered that not all families who would prefer to exercise the option will automatically qualify for AFDC-UF. For example, the father must meet the eligibility requirements of Section 607(b)(1) and cannot have over $1800 in resources to be eligible.

Nor would the Court's application of the statute necessarily inure to the economic benefit of employers. Since employers are segregated into rate classes for purposes of determining their contribution rate to the fund, 21 V.S.A. Section 1326(A)(2), their rate would change only if their class changed.[18] Moreover, even if the contribution rate did decline, this cannot be characterized as a "windfall" or "unjust enrichment." It simply means that the employer would not be taxed at as high a rate in the future because his employees were drawing less from the fund.

It is not an "extraordinary result" that Congress should make provision for those families in which the amount of available unemployment compensation falls far below the subsistance level as defined by the State for purposes of its ANFC program. Indeed, it would be extraordinary if some children were deprived of subsistence solely due to their father's eligibility for unemployment compensation.[19]

[18]Whether or not the employer's class changed would depend on a number of variables including the amount of the employer's benefit ratio, the amount of his annual taxable payroll and its relationship to annual taxable payrolls of other employers. 21 V.S.A. Section 1326(A)(1). The classes are determined by cumulative payroll percentage limits. (Col. B of Table accompanying 21 V.S.A. Section 1326). Absent the right combination of factors, an employer whose taxable payroll is near the ceiling would not have his contribution rate reduced.

[19]This result would be particularly irrational in light of the fact that a man who quits his job "voluntarily without good cause attributable to his employer" or who is discharged for misconduct connected with work is disqualified from receiving unemployment compensation for up to twelve weeks. 21 V.S.A. Section 1344. His family will be eligible for the higher ANFC benefits. It is the man who leaves for good cause whose family is penalized. *Francis v. Davidson*, 340 F.Supp. 351 (D.Md.) *aff'd.* 409 U.S. 904 (1972).

It has frequently been said, usually in the context of sustaining legislation against constitutional attack, that there are many constitutionally permissible ways in which Congress may seek to deal with a problem. *Jefferson v. Hackney*, 406 U.S. 535, 546-547 (1972). In 1961, Congress was concerned that fathers were deserting their families so that the remnants would be eligible for ANFC under 42 U.S.C. Section 606. The ANFC-UF program was the outgrowth of that concern. Paradoxically, the defendants' interpretation of 607(b)(2)(C)(ii) would directly undercut that objective. A father eligible for unemployment insurance that is less than the family's ANFC entitlement could desert the family. Not only would the remnant be eligible for ANFC under Section 606, but the father could draw unemployment compensation to support himself during the period of his unemployment. Surely, Congress could not have intended such a catastrophic result.

Where the language of Section 607(b)(2)(C)(ii) is "crystal clear," *Allen v. State Board of Education*, 393 U.S., *supra*, at 570, internally consistent, *Malat v. Riddell*, 383 U.S. 569, and compatible with other provisions of the AFDC program, there is no occasion to depart from the literal meaning of the statutory language. *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 492 (1947); *Kuehner v. Irving Trust Co., supra*; *Wilbur v. United States, ex rel. Vindicator Consolidated Gold Mining Co., supra*; *Ex Parte Collett*, 337 U.S. 55, 61 (1949).

(b) Assuming the circumstances of this case require resort to the legislative history, that history is at best inconclusive and, in any event, is not at variance with the district court's reading of the statute

It is clear that when Congress created the optional unemployed parent program in 1961, it left it up to the individual states to decide whether AFDC could be used to supplement unemployment compensation.[20] This was an early recognition that state unemployment compensation benefits might fall below the level of subsistence. The legislative history since 1967 is unilluminating as to Congress' intention regarding the impact that eligibility for unemployment compensation would have on eligibility for AFDC-UF.

The House Ways and Means Report[21] simply states that "Under the committee bill, states must exclude from the program anyone who *is receiving* unemployment compensation."

The report of the Senate Finance Committee[22] was

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[20]Of the twenty-two states that had the UF program in effect in 1966, only three (Maryland, Arizona and West Virginia) considered receipt of unemployment insurance a bar to eligibility. The other states treated unemployment benefits as a resource in determining need. Characteristics of the Unemployed Parent segment of state programs for Aid to Families with Dependent Children Approved and in Operation, Dec. 1, 1966. Summary reproduced as Appendix A.

[21]H.R. Report No. 544 (accompanying H.R. 12080) 90th Cong. 1st Sess. at 108 (1967).

[22]S. Fin. Comm. Resp. No. 744, 90th Cong. 1st Sess. at 160 (1967).

concerned that under the House bill a family was excluded from AFDC for any month in which the father received unemployment compensation.

> "The House bill prohibits the payment of assistance (with federal participation) to a family that receives any amount of unemployment compensation during the same month. Since the unemployment compensation may be for only a small part of the month, a family's income could be far below the state's standard of need and still the family would be ineligible for assistance. The committee bill returns to existing law under which the choice "as to whether unemployment compensation payments can be supplemented, is left to the states."

The conference report[23] sheds no light on the matter and, in fact, muddies the waters even more. The report states:

> "Unemployed Fathers Under AFDC"
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> "Amendments Nos. 186, 189, 190, 191, 193 and 195: Section 407 of the Social Security Act, as amended by Section 203(a) of the House Bill, defined an unemployed father (for purposes of determining the eligibility of his children for AFDC) so as to exclude fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application for aid and fathers who receive (or are qualified to receive) any unemployment compensation under state law."
>
> "The Senate amendments removed these exclusions and restored the provisions of the present law under which a state may at its option wholly or partly deny AFDC for any month where the father

[23] H.R. Rep. No. 1030, 90th Cong., 1st Sess. 57 (1967).

> receives unemployment compensation during the month. (The Senate amendments also removed certain work or training requirements in order to conform with amendment No. 198, and modified the effective date provisions of the House bill).
>
> "The Senate recedes (except on the conforming amendments and effective date provisions)."

The committee was clearly talking about the *eligibility* requirement that the father either have six quarters of work in the previous thirteen calendar quarters or been receiving or qualified to receive unemployment compensation within the year prior to his applying for ANFC, and not the exclusion of families in which the father is currently receiving unemployment compensation. The second paragraph simply describes the amendment offered by the Senate which would have excluded these two eligibility provisions and retained the optional supplement approach of the 1961 legislation. While the syntax is confusing, it is clear that the committee was describing two quite different proposals. This reading is bolstered by the fact that there is nothing in the House report to indicate that families would be excluded if the father is presently eligible for unemployment compensation but refuses to accept it.

The Secretary argues against this interpretation "because the conference report refers to the *exclusion* of fathers who receive (or are qualified to receive) any unemployment compensation." Brief of HEW p. 22. Since Section 607(b)(1)(C) is an inclusionary rule and 607(b)(2)(C)(ii) is an exclusionary rule he argues that the entire report must be referring to the latter.

The Secretary overlooks the fact that in the very same sentence, the report refers to the *exclusion* of

"fathers who do not have six or more quarters of work in any thirteen calendar quarter periods ending within one year prior to the application of aid, . . .". Since this is clearly a requirement of 607(b)(1)(C), it demonstrates the futility of parsing the sentence as the Secretary suggests. The most plausible reading is that the Conference Committee described both elements of 607(b)(1)(C) in the negative, without attaching any substantive importance to it. Significantly, the House Report spoke of *excluding* from the program "those fathers who have not been in the labor force, or whose attachment to the labor force has been casual." H.R.Rep. No. 544, 90th Cong. 1st Sess. 108 (1967).

The State argues that it is significant that the words "or qualified to receive" are enclosed in parentheses, and that this is evidence that the Committee read "receives" to include eligibility. This does not explain why Congress spelled it out in 607(b)(1)(C) and not in 607(b)(2)(C)(ii). Congress obviously saw a distinction, a conclusion which is reinforced by the fact that both sections were enacted on the same day. In any event, this Court has refused to draw any inferences from the appearance of parenthetical clauses in the legislative history which have been elided in the final draft of the legislation. *Gemsco, Inc. v. Walling*, 324 U.S. 244, 263-65 (1945).

Plaintiffs' analysis is furthered by the 1968 conference report:[24]

> "Section 302. *Aid to families with dependent children in case of unemployed fathers receiving unemployment compensation.*

[24]S. Rep. No. 1014, 90th Cong. 2d Sess. 9 (1968).

> Section 302 of the conference substitute corresponds to section 14(c) and (d) of the Senate amendment. Section 14(c) and (d) eliminated the provision (in sec. 407(b)(2)(C) of the Social Security Act) prohibiting the payment of AFDC to a family on the basis of the father's unemployment for any period in which the father receives unemployment compensation under State or Federal law, and substituted a provision (in sec. 407(c)) giving each state the option under the State plan to deny all or any part of the aid otherwise payable under the plan to a family on the basis of the father's unemployment for any month if the father received unemployment compensation under State or Federal law for any week or part of which is included in such month. There was no corresponding provision in the House bill.
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> "Section 302 of the conference agreement instead modifies section 407(b)(2)(C) of the act to "prohibit the payment of AFDC to a family on the basis of the father's unemployment with respect to any week for which the father receives unemployment compensation under State or Federal law. It is the intention of the conferees that if the father receives unemployment compensation for all the weeks which fall wholly or partly in a month, the family could not under any circumstances receive all AFDC payment for that month; and if the father receives unemployment compensation for one or more but less than all the weeks which fall (wholly or partly) in a month, the family's AFDC payment will be reduced by the percentage of the month represented by such week or weeks (or by the portion of such week or weeks which falls in such month)."

Again, the conference committee speaks solely in terms of the father's "receipt" of unemployment compensation and not his eligibility to receive such benefits.

On pages 22 and 23 of his brief, the Solicitor General refers to a Report of the Senate Finance Committee to support his interpretation of Section 607(b)(2)(C)(ii). However, the language he quotes is merely a heading preceding the names of certain persons who gave testimony before the Senate Committee. This is hardly persuasive of Congress' intention in enacting the disqualification provision.[25]

The State refers to the H.R.Rep. No. 544, 90th Cong. 1st Sess. 2 (1967), for the proposition that Congress possessed a "firm intent of reducing the AFDC rolls." While it concedes that this portion of the House Report did not have reference to 607(b)(2)(C)(ii), the State argues that Congress could not have intended to permit unemployed fathers to reject their entitlement and join the welfare rolls.

The Committee's discussion of the provision itself leaves no doubt that it could distinguish eligibility for

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[25]These "headings" purport to summarize the testimony of the persons whose names appear under them. The following caveat appears as an Editor's Note:

> "Editor's Note.—Due to the voluminous oral and written testimony on H.R. 12080 and related proposals, in order for any summary to be useful, it is necessary to broadly categorize positions of organizations and individuals. In so doing, it should be understood that it is not possible to include all of the qualifications or conditions with which such organizations and/or individuals may have accompanied such position on each issue. Nor is it possible to attempt an interpretation of a stated position. Nevertheless, an objective attempt has been made to present fairly the position of each witness." Brief Summary of Major Recommendations Presented in Oral and Written Statements During Public Hearings before Senate Committee on Finance, on H.R. 12080, 90th Cong., 1st Sess., p. vii (Committee Print 1967).

unemployment benefits from receipt of unemployment benefits.[26] Furthermore, an intent to reduce the welfare rolls solely to protect the fisc is an impermissible legislative purpose. *Shapiro v. Thompson*, 394 U.S. 618, 633.

In *United States v. Shreveport Grain and Elevator Co.*, 287 U.S. 77, the Court discussed the role played by Congressional Committee Reports in the interpretation of statutes:

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[26]"This program was originally conceived as one to provide aid for the children of unemployed fathers. However, some States make families in which the father is working but the mother is unemployed eligible. The bill would not allow such situations. Under the bill, the program could apply only to the children of unemployed fathers. Moreover, it is the intent of your committee to exclude from the program those fathers who have not been in the labor force, or whose attachment to the labor force has been casual. Under the bill, Federal sharing will be limited to cases where the father has had at least six quarters of work in any 13-quarter period ending during the year before application for assistance. A quarter of work is one in which the father had earnings of at least $50. A quarter of coverage under the social security program would also be a "quarter of work" so that welfare agencies could use the social security earnings record to verify eligibility under this provision. If a father had been eligible for unemployment compensation or would have been eligible if his employment had been covered within the year before applying for assistance the six quarters of work requirement would not have to be met. In addition, it is provided that the father must have been unemployed (as defined by the Secretary) for at least 30 days prior to receipt of assistance. Under the committee bill, States must exclude from the program anyone who is receiving unemployment compensation." H.R. Report No. 544, 90th Cong., 1st Sess. at 108 (1967).

"In proper cases, such reports are given consideration in determining the meaning of a statute, but only where that meaning is doubtful. They cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms. *Wisconsin R.R. Comm. v. C., B. & Q. R. Co.*, 257 U.S. 563, 588-589; *Penna. R. Co. v. International Coal Co.*, 230 U.S. 184, 199; *Van Camp & Sons v. American Can Co.*, 278 U.S. 245, 253. Like other extrinsic aids to construction their use is 'to *solve*, but not to *create* an ambiguity.' *Hamilton v. Rathbone*, 175 U.S. 414, 421. Or, as stated in *United States v. Hartwell*, 6 Wall. 385, 396, 'If the language be clear it is conclusive. There can be no construction where there is nothing to construe.' The same rule is recognized by the English courts."

The various congressional reports concerning the development of the ANFC-UF program fail to shed light on the issue presented in this case. First, to the extent that they discuss receipt of unemployment compensation, they address a different issue: the problem that arises when a family receives UCC for a fraction of the month.[27] Secondly, if the discussions in

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[27]In 1967, Section 607(b)(2)(C)(ii) excluded families from ANFC-UF for any *month* in which the father received unemployment compensation. Since unemployment compensation is paid on a weekly basis, this meant that if a father's benefits ran out in the first week of the month, he could not get ANFC until the next month. Remarks of Hon. Wilbur Cohen, Undersecretary of HEW, Hearings before S.Comm. on Finance, 90th Cong. 1st Sess. (H.R. 12080) 268-269. The 1968 amendments changed the disqualification from a month to a week.

It is apparent that this is a problem that would affect all recipients of unemployment compensation, no matter how high

these reports may properly be extrapolated, they confuse rather than clarify the issue. To the extent that the reports speak in terms of "receipt" of unemployment compensation, they support a literal reading of 607(b)(2)(C)(ii). The Conference Committee Report, relied on heavily by the defendants, is unilluminating. It cannot be said with certainty whether the phrase "qualified to receive" pertains to 607(b)(1)(c) or (b)(2)(C)(ii). The Committee Print referred to by HEW carries its own admonition that it may not accurately summarize the testimony of the witnesses. These reports do not solve any ambiguity in the statutory language. Instead, they produce uncertainty and obfuscate the clear meaning of 607(b)(2)(C)(ii). The legislative history is at best inconclusive, and does not justify deviating from the plain meaning of the statute. *United States v. Oregon*, 366 U.S. 643, 648 (1961). As this Court said in *Ex Parte Collett*, 337 U.S. 55, 61 (1949):

"The short answer is that there is no need to refer to the legislative history where the statutory language is clear. 'The plain words and meaning of the statute cannot be overcome by a legislative history which, through strained processes of

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their benefit. For example, a father could be drawing weekly unemployment benefits that, when figured on a monthly basis, exceed the state standard of need. Thus, given an option, he would choose to take unemployment benefits over welfare. But if those benefits ran out in the first week of the month, under the 1967 legislation he could not receive welfare for the remainder of the month. This was the problem addressed by Congress in 1968, and not whether the father might elect to forego the unemployment benefits in the first place.

deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." *Gemsco v. Walling*, 324 U.S. 244, 260 (1945). This canon of construction has received consistent adherence in our decisions." (Note 12 citing cases is omitted).[28]

(c) Under the circumstances of this case, the interpretation given the statute by HEW is not entitled to special consideration

Defendants argue that since HEW is the federal agency charged with administration of the Social Security Act, deference must be given to its interpretations. Several considerations militate against the application of the rule in this case.

First, this Court has recently said, "the sound principle of according deference to administrative practice normally applies only where the relevant statutory language is unclear or susceptible of differing interpretations." *Shea v. Vialpando*, 416 U.S. 251, 94 S.Ct. 1746, 1754 n. 11 (1974). As pointed out above, the statutory language is clear.

Secondly, HEW's interpretation may be disregarded, particularly where it is at variance with its own regulation's clear language. *Francis v. Davidson*, 340 F.Supp. 351, 365-66 (D.Md.) *aff'd* 409 U.S. 904 (1972). 45 C.F.R. 233.100(a)(5)(ii) tracks the statutory language that it is the "receipt" of unemployment benefits that triggers the disqualification. Moreover,

[28]The rule is the same for statutory revisions. See *Bate Refrigerating Co. v. Sulzberger*, 157 U.S. 1, 45 (1895) cited in *Ex Parte Collett*, *supra*, footnote 12.

during the course of this litigation, HEW has altered its position. Brief of HEW pp. 15-17 n. 4. This in itself is reason to dispense with its views. *DeSylva v. Ballentine*, 351 U.S. 570, 577-78 (1956).

Thirdly, in light of the purposes of the ANFC program, the Secretary has a heavy burden to demonstrate a congressional intention that otherwise eligible children must be excluded. Such exclusions should be *clearly evidenced* from the Social Security Act or its legislative history. *Townsend v. Swank*, 404 U.S. 282, 286 (1971); *Carver v. Hooker*, 501 F.2d 1244, 1248 (1st Cir. 1974); *Doe v. Lukhard*, 363 F.Supp. 823, 828-29 (E.D. Va. 1973) *aff'd* 493 F.2d 54 (4th Cir. 1974); *Alcada v. Burns*, 494 F.2d 743 (8th Cir. 1974); *Carleson v. Remillard*, 406 U.S. 598 (1972).

A final consideration in determining the meaning of 607(b)(2)(C)(ii) is that the construction made by the district court may be necessary to forestall a successful equal protection attack on the statute. *Carver v. Hooker*, 501 F.2d, *supra*, at 1248. This Court has said that "[a]ny doubt must be resolved in favor of [a] construction to avoid the necessity of passing upon the equal protection issue." *Townsend v. Swank*, 404 U.S., *supra*, at 291.

(d) The District Court's interpretation does not conflict with the purposes of the unemployment compensation program

All parties to this case agree that unemployment compensation and ANFC are mutually exclusive programs. We differ on the consequences of that relationship.

There is no question that when unemployment compensation was first created in 1935, it was intended to be the "first line of defense against unemployment". But subsequent developments in the growth of a legislative program may render legislative interests once considered relevant no longer legitimate. *King v. Smith*, 392 U.S. 309, 320-21 (1968). This was the case with the "suitable home provision" of the 1935 Social Security Act. Id at 321-327. The enacting Congress expected the Act to be molded and developed by future legislatures and later congressional pronouncements must be considered indicative of an evolving legislative intention. *Carver v. Hooker*, 501 F.2d at 1246-1247 n.5.; see Comm. on Ways and Means Report, H.R.Rep. No.615, 74th Cong. 1st Sess. 16-17 (1935).

In 1935, the assistance program for needy children did not extend to children of the unemployed. While Congress hoped that some children would be benefitted by the unemployment insurance program, it was emphatically an insurance program unrelated to individual family needs. W. Haber & M. Murray, Unemployment Insurance in the American Economy: An Historical Review and Analysis 42 (1966). Witte, Development of Unemployment Compensation, 55 Yale L.J. 21 (1945).

1961 saw a volte-face with respect to the programs. Recognizing that fathers were deserting their families so that they could be eligible for ANFC, Congress expanded the program to include the children of the unemployed. Congress was also aware that in some instances, unemployment compensation benefits might fall below the level of subsistence as set by the state. Therefore, it permitted the states to supplement

unemployment insurance with ANFC-UF. This refutes the Secretary's claim that "the history of Congress' adjustments of the relationship between AFDC and unemployment compensation demonstrates that Congress intended that AFDC not be available when unemployment compensation can be obtained." Brief of HEW, p. 19.

There is not one word in the legislative history of 1967-1968 that Congress felt the unemployment insurance system was being undercut or that accomplishment of its objectives was jeopardized by supplementation of benefits. In this connection, it is noteworthy that Congress did not alter the treatment of unemployment insurance as a resource where a child is deprived of parental support due to the death, absence or disability of his parent. 42 U.S.C. Section 606.

The Secretary argues that the effect of the District Court's decision is to subsidize unemployed *parents* through the AFDC program. Brief of HEW p. 26. This is simply untrue. Under the categorical assistance program, the parent is the conduit through which funds are channelled to the child. *Cooper v. Laupheimer*, 316 F.Supp. 264, 269 (E.D.Pa. 1970).

The state argues that the court's ruling results in shifting the burden of supporting families of unemployed fathers from unemployment insurance to the AFDC program. This is undoubtedly true for those families where the amount of unemployment benefits falls below the state need standard and the family is otherwise eligible for ANFC. But this is not a compelling argument where one program is based on need and the other on insurance concepts. In fact, by

permitting the family an option, Congress may have been motivated to protect the unemployment insurance system. As one commentator has observed:

> "Absence of public assistance for the unemployed in many states and localities brings pressure on the unemployment insurance program to provide for longer and longer duration of benefits and lower eligibility requirements because the unemployed have no other place to turn for income maintenance. Therefore, the integrity of unemployment insurance requires a complementary program of unemployment assistance. This problem becomes particularly acute in times of recession when unemployment becomes prolonged for large numbers of workers."
>
> W. Haber and M. Murray, Unemployment Insurance in the American Economy: An Historical Review and Analysis 482 (1966).[29]

Contrary to the State's argument, the unemployment insurance program is not in danger of duplicating the purpose of ANFC-UF to meet the needs of the children of the unemployed. The statistics compiled by the state and presented in its brief at pages 31 and 32 are misleading. While it is true that average weekly unemployment compensation benefits have increased, these higher payments do not necessarily benefit the

[29]This is not a hypothetical concern. The Vermont unemployment fund is seriously depleted. Since January, 1974, the Department of Employment Security has borrowed $8,411,500 from the reserve fund with which to pay benefits. An additional $2.9 million loan will be credited to Vermont on February 1, 1975. Conversation with Bill Robinson, Director, Unemployment Insurance Division on January 21, 1975.

ANFC-UF population.[30] Studies have shown that AFDC fathers are at the low end of the distribution of male workers in terms of education, jobs and earnings. Based upon a 1973 study conducted by HEW, it may be concluded that unemployment insurance payments are actually declining relative to ANFC-UF for this population.[31]

These statistics serve to point up an important flaw in the defendants' arguments that the disqualification is a reasonable means by which to ensure the growth of the unemployment insurance program. That program is designed for persons of all income levels. There will always be low paying jobs held by persons with marginal abilities and limited education. Congress recognized this in 1961 when it permitted the states to supplement unemployment insurance with ANFC. It is not likely that Congress would have cut these children off without some discussion.

The consequence of the defendants' position is to create two classes of similarly situated children, one deprived of subsistence as determined by the state solely because the father is eligible for unemployment insurance, no matter how small. As the Court said in *Carleson v. Remillard, supra*:

> "We cannot assume here, anymore than we could in *King v. Smith, supra*, that while Congress 'intended to provide programs for the economic security and protection of *all* children,' it also 'intended arbitrarily to leave one class of destitute

[30]See Memorandum Concerning Average Monthly Payments Under AFDC-UF and Unemployment Insurance, Appendix B of this brief.

[31]See Appendix B, pp. 3-9.

children entirely without meaningful protection.' 392 U.S. at 330"

Carleson v. Remillard 406 U.S. at 604.

IV.

42 U.S.C. SECTION 607(b)(2)(C)(ii), ASSUMING IT CREATES AN AUTOMATIC AND TOTAL DISQUALIFICATION FROM ANFC-UF, IF THE FATHER IS QUALIFIED TO RECEIVE UNEMPLOYMENT COMPENSATION, VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

(a) The Court should reach and decide the constitutional issue on the merits even though it was not passed upon by the district court

As a consequence of its finding that 607(b)(2)(C)(ii) affords the father an option to reject unemployment benefits, the district court applied the "rule of necessity" and declined to reach the constitutional issues. It is well established, however, that the prevailing party has the right to seek affirmance on any ground which has support in the record. *Dandridge v. Williams*, 397 U.S. 471 n.6 (1970); *United States v. Ballard*, 322 U.S. 78, 88 (1944); *Langnes v. Green*, 282 U.S. 531, 538-39 (1931).

This Court has never articulated any standards by which to determine when it will reach a constitutional argument briefed and argued but not passed upon by the lower court. Adequate presentation to the Supreme

Court is obviously a consideration. *United States v. Ballard*, 322 U.S. at 88; *Aetna Casualty Co. v. Flowers*, 330 U.S. 464, 468 (1947). Surely, the breadth and immediacy of the issue, the number of persons affected and the consequences of a lack of a dispositive ruling taking the realities of the situation into consideration, should be part of that determination. While the informed judgment of the lower courts is desireable, particularly where the issue is of constitutional magnitude, there may be cases which warrant immediate consideration. In *Langnes v. Green*, 282 U.S. *supra*, at 538, the Court indicated that it would reach the issue if there is "good reason to do so." Plaintiffs believe this is such a case.

The country is in the midst of an economic recession. Unemployment is at the highest level in thirteen years. The national rate of unemployment is 7.1% and is expected to rise to 8%. The insured unemployment rate in Vermont soared to 9.2% for the week ending January 14, the highest rate in almost fourteen years. St. Albans, Vermont has an unemployment rate of 17.7%. Six of the eleven areas of the state have insured jobless rates of 11% or higher. The number of persons filing claims for benefits jumped from 14,000 to 15,675 in one week. Resolution of the issue presented to this Court is of critical importance not only to the children in Vermont who will be deprived of a subsistence level of income if the district court is reversed, but also for the thousands of children throughout the country who would be eligible for ANFC but for the disqualification provision.

The Department of Health, Education and Welfare has briefed the constitutional issue presented by this

case not only in the District Court of Vermont but also in a case raising the identical issues in the District of Maryland. *Salamone v. Mason*, Civ.Action No. M-74-656 (D.Md. filed June 25, 1974). Plaintiffs have requested the defendants to brief those issues for this Court.

The Solicitor General asserts that it would be "inappropriate" to reach the constitutional issue and gives the reason that "the claims should be considered by the district court in light of a proper construction of the statute." Whatever benefit the District Court might derive from such a clarification, surely it is overriden by the desparate financial plight faced by the affected families. Plaintiffs respectfully urge the Court to reach and determine those issues without a remand.

(b) 607(b)(2)(C)(ii) violates the due process clause of the Fifth Amendment because it discriminates against classes of children according to the source of the father's income and not the need of the children

(i) The Standard of Review

It is well settled that equal protection[32] challenges

[32]Although the Fifth Amendment contains no equal protection clause, discrimination may be so arbitrary and unjustifiable as to violate the due process clause. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954). The same test is applied in determining whether a federal statutory classification in the area of social welfare comports with due process as is applied in determining whether a state classification is consistent with the equal protection clause of the Fourteenth Amendment. *United States Dept. of Agriculture v. Moreno*, 93 S.Ct., 2821, 2825 n.5 (1973).

to welfare legislation are to be tested by the "traditional" standard of review. *Dandridge v. Williams*, 398 U.S. 471 (1970). Thus, where the goals sought by a legislative classification are legitimate and the classification adopted is rationally related to the accomplishment of those goals, the legislation will be upheld. *Richardson v. Belcher*, 404 U.S. 78, 81 (1971).

In *United States Dept. of Agr. v. Moreno*, 93 S.Ct. 2821 (1973), the Court applied the "traditional" standard to strike down a provision of the Food Stamp Act that totally excluded otherwise needy households from foodstamps due to the presence of an unrelated person under age sixty in the household. The case is important both for its methodology and its result.

First, the Court found that the exclusion was irrelevant to the Food Stamp Act's stated goals of alleviating malnutrition and stimulating the nation's agricultural economy. The Court then examined the meager legislative history to see whether it might reveal some other purpose that would support the exclusion. It held that an expressed intent to prevent hippie communes from receiving food stamps was an improper governmental purpose.

Lastly, the Court addressed the contention that the exclusion bore a rational relationship to the government's interest in preventing fraud. This justification was also rejected, principally because the Court believed that the practical result of the exclusion would be to penalize the very persons the Act was designed to assist. The Court also found it doubtful that Congress could rationally have intended the provision to protect against abuse when the Act contained provisions aimed specifically at those problems.

It has been suggested that the Court applied a stricter version of the "traditional" equal protection test in *Moreno* than was applied in such cases as *Jefferson v. Hackney*, 406 U.S. 535 (1972), *Richardson v. Belcher*, 404 U.S. 78 (1971) and *Dandridge v. Williams, supra*. Note, the Supreme Court, 1972 Term, 87 Harv.L.Rev. 55, 125-133 (1973). Assuming that this is true, it is justified by the fact that unlike the other cases cited, there was no question that the households excluded were equally needy. "[I]t is appropriate for the courts to be more deferential toward legislative decisions about the basic welfare problem of identifying the needy than toward legislative discriminations on the basis of efficiency between those of equal need." 87 Harv.L. Rev. at 132.

Plaintiffs maintain that, assuming the Court did apply a stricter standard of review in *Moreno*, precisely the same considerations are present in the instant case.

(ii) Consideration of the mandatory bar provision within the analytical framework of USDA v. Moreno

(A) Statutory purpose

The unemployment compensation program was originally conceived as providing a pool of funds from which workers could receive "partial replacement of lost earnings" during period of unemployment. Like OASDI, unemployment insurance is not an antipoverty program. Eligibility for assistance and the level of benefits are based on past earnings experience and not

on need. The poor often are excluded or receive inadequate benefits.[33]

Although unemployment insurance was established along with the other social insurance programs under the Social Security Act of 1935, it is unique. While it fulfills a "need" in the sense that any income during a period of unemployment is better than nothing, *California Department of Human Resources Development v. Java*, 402 U.S. 121(1971), it is not based on "need" as defined in the categorical assistance programs. While it might be possible to sustain life on fourteen dollars per week, it is bound to have adverse consequences for the physical and mental health of the children.

Contrariwise, the AFDC program was designed to provide subsistence to families on the basis of demonstrated need. It is true, as defendants claim, that as originally conceived, the AFDC program was not intended to protect all needy children. A Senate committee report stated that "many of the children included in relief families present no other problem than that of providing work for the breadwinner of the family." S.Rep. No. 628, 74th Cong. 1st Sess. 17 (1935) quoted in *King v. Smith*, 392 U.S. 309, 328 (1968). For twenty-five years, AFDC benefits were unavailable to intact families made needy due to unemployment of the parent. But this was all changed in 1961 when Congress amended the definition of

[33] S. Levitan, Programs in Aid of the Poor for the 1970s, 39-40 (1969). The amount of benefits are invariably set at one half the average weekly earnings. Haber & Murray, Unemployment Insurance in the American Economy, 173 (1966).

"dependent child" to include those in need due to parental unemployment.

When Congress enacted ANFC-UF legislation, its aim was to provide the children with subsistence, not to deal with the problem of unemployment. This is reflected in the Handbook of Public Assistance Administration, in wh.ch HEW emphasized that ANFC-UF was not a new federal program to deal with the problem of unemployment, but rather that it "simply extends the definition of "dependent child" under Title IV of the Social Security Act "to include a group not previously covered." Handbook of Public Assistance Administration, Part IV ¶3424.2 (1963). In the course of discussing the definition of unemployment which was to be left up to the individual states, HEW emphatically stated:

> "In addition, the extension is clearly *not* a separate 'unemployment relief measure' but is designed to reach children *not otherwise eligible* but needy because a parent is unemployed."
>
> HEW Handbook of Public Assistance Administration ¶3424.21 (1963).

Whatever justification may exist for the classification, it cannot be that children are less needy because their fathers secure some income during the period of unemployment. This is demonstrated by the fact that if the father receives a pittance from any source other than unemployment insurance, it is merely subtracted from the assistance grant. The eligibility of the father for unemployment compensation has no rational connection with the need of his children under the assistance program. *King v. Smith*, 392 U.S. 309, 336 (1968) (Douglas J. concurring.) The mandatory bar

provision is subversive of the statutory purpose of providing basic financial protection to needy dependent children, which this Court has recognized as "the paramount goal of AFDC." *King v. Smith*, 392 U.S. at 325.[34]

(B) Legislative history and other suggested justifications for the bar

One searches the legislative history in vain for any inkling of the reason for the exclusion. The defendants argue that Congress intended that "the number of families on AFDC is to be kept to a minimum." Like the anti-hippie bias in *Moreno*, a statutory provision designed solely to keep families off the welfare rolls is constitutionally impermissible. *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969); *Memorial Hospital v. Maricopa County*, 94 S.Ct. 1076, 1085 (1974).

In *Burr v. Smith*, 322 F.Supp. at 985, the court suggested that "the receipt of insurance benefits to which they have contributed may be better for the

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[34]The subsidiary statutory purposes to strengthen the family unit in which the children are being raised and to help the caretaker achieve maximum self-support and personal independence "consistent with the maintenance of continuing parental care and protection, . . ." are also undercut. First, the exclusion encourages fathers to desert their families to make them eligible under 42 U.S.C. Section 606. Second, assuming it encourages personal independence and self support to force the father to accept inadequate unemployment benefits, this clearly cannot be achieved at the expense of "parental care and protection." 42 U.S.C. Section 601.

morale of unemployed workers than would be dependence upon or even eligibility to receive welfare assistance." But it is plainly irrational to boost the father's morale at the expense of the nutrition and wellbeing of his children. Nor can the exclusion constitute an incentive to work when the law already requires that the individual be registered to accept work at the time he applies for benefits.[35] The existence of such a provision casts considerable doubt on the proposition that Congress could rationally have intended to prevent this particular abuse. *United States Department of Agriculture v. Moreno*, 93 S.Ct. at 2827.

No other objective of the unemployment insurance program is advanced by excluding the family from ANFC. Those objectives have been described by the Department of Labor as follows:

> "Unemployment insurance is a program—established under Federal and State law—for income maintenance during period (sic) of involuntary unemployment due to lack of work, which provides partial compensation for wage loss as a matter of right, with dignity and dispatch, to eligible individuals. It helps to maintain purchasing power and to stabilize the economy. It helps to prevent the dispersal of the employers' trained work force, the sacrifice of skills, and the breakdown of labor standards during temporary unemployment."
>
> U. S. Dept. of Labor, Bur. of Emp. Sec., Major Objectives of Federal Policy with Respect to the Federal-State Employment Security Program, Gen. Admin. Letter, No. 35, April 25, 1955.[36]

[35] 42 U.S.C. Section 607(b)(2)(C)(i).

Whether or not unemployment compensation is supplemented with welfare assistance is irrelevant to the attainment of these objectives.

In the District Court, HEW advanced two rationalia for the disqualification. First, it suggested that Congress was motivated by an intent "no longer to mask states' deficiencies in implementing unemployment compensation programs." But, as the government itself has recognized, the purposes of the programs are different.[37] Having recognized the dependency of children whose fathers are unemployed, it is irrational to deprive some of them of subsistence to encourage growth of an insurance program never designed for that purpose.

HEW also argued that the disqualification provision may have been inserted so as not to stifle "the independent growth of the compensation programs through the previous practice of letting ANFC funds be

[36] Quoted in Haber and Murray, Unemployment Insurance in the American Economy 26. The authors comment that the objective of stabilizing employment is "not mentioned much today" and the objective of stabilizing the economy through purchasing power has a "limited but important" effect. *Ibid.* p. 32-32.

[37] Even those states that provide for dependent's allowances as part of their unemployment compensation program do not do so on a "needs" basis. "The vital difference that still exists between unemployment insurance and relief is that no individual inquiry and determination is made as to whether the claimant actually needs the dependent's benefit in order to house, feed and clothe the dependent." Haber & Murray, Unemployment Insurance in the American Economy, 193.

used as a substitute." But ANFC funds never were used as a "substitute". Under former Section 607, states were permitted to supplement unemployment compensation with ANFC-UF if the former was lower than the state need standard.

Like *Moreno*, the statutory classification results in the total exclusion of one class of equally needy children. Like *Levy v. Louisiana*, 391 U.S. 68 (1968) the children are punished for something over which they have no control. See *King v. Smith, supra; Bradford v. Juras*, 331 F.Supp. 167 (D.Or. 1971); *Cooper v. Laupheimer*, 316 F.Supp. 264 (E.D.Pa. 1970). Like *United States Department of Agriculture v. Murry*, 93 S.Ct. 2832 (1973), the mandatory bar provision creates a conclusive presumption that children are less in need solely because their fathers are eligible for unemployment compensation, no matter how small the amount. And like *Anderson v. Burson*, 300 F.Supp. 401 (N.D. Ga. 1968), it discriminates against children solely on the basis of the source of their parent's income. There can be no justification for treating these children differently from other children whose unemployed fathers receive income from other sources such as Social Security, Workman's Compensation, veteran's benefits or contributions from friends. The mandatory bar provision should be struck down under the Due Process Clause of the Fifth Amendment.

No decision of this Court requires a contrary result.

In *Richardson v. Belcher, supra*, the Court upheld a provision of the Social Security Act offsetting federal disability benefits against state workmen's compensation. Under the Act, total state and federal benefits are limited to 80% of the employee's average earnings prior

to the disability. Plaintiffs argued that workmen's compensation was subject to different treatment than other types of disability insurance.

Congress had made findings that in 35 out of 50 states, a typical worker injured and eligible for both federal disability and state compensation received benefits in excess of his take home pay. The offset provision was upheld by the Court on the ground that Congress could be legitimately concerned (1) that the worker's incentive to return to work could be destroyed where his benefits exceeded his take home pay; (2) that this situation impeded rehabilitative efforts of the state program; and (3) that duplication in benefits might lead to the erosion of the workmen's compensation program. However, the Court expressly noted that the new law allowed a supplement to workmen's compensation where the state payments were inadequate.

Three critical factors serve to distinguish the disqualification provision in the instant case from the workmen's compensation offset upheld in *Belcher*. First, offsetting benefits so that an individual does not earn more from his disability than on the job is understandable in terms of a work incentive. Totally excluding a family from ANFC is incomprehensible.[38]

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[38]The "incentive" to go back to work in this context would be deliberately to deprive the family of enough money to live on. This was hardly the type of incentive the Court was talking about in *Belcher* where the worker was actually encouraged *not* to go back to work because he would earn less money. Or in *Dandridge v. Williams*, 397 U.S. 471, (1970), where the Court noted that "By combining a limit on the recipient's grant with permission to retain money earned, without reduction in the amount of the grant, Maryland provides an incentive to seek gainful employment." *Id.* at 486.

Secondly, in stark contrast to the rich legislative history in *Belcher*, there is nothing to indicate the intent of the legislature in totally excluding plaintiffs' families from ANFC.

Thirdly, workmen's compensation and disability both serve a common purpose–to pay the worker and his dependents substitute earnings during the period of his disability. Unemployment compensation operates on the same principle. But ANFC is designed to provide benefits to the family based on need. Clearly *Belcher* would not rule out supplemental ANFC benefits to augment unemployment compensation to meet the subsistence standard set by Vermont. Nor could it be argued that such payments could lead to the erosion of the unemployment compensation program.

Dandridge v. Williams, supra, and *Jefferson v. Hackney, supra*, are similarly inapposite. *Dandridge* dealt with relative economic hardships within the ANFC program. The lack of available money forced the state to choose between limiting the "per child" payments for all families, or setting a maximum benefits ceiling for large families. The state chose the latter recognizing the ability of large families to achieve "economies of scale". The mandatory bar provision totally excludes the family from ANFC regardless of size or the amount of the unemployment benefit. The government has never claimed that the exclusion is required to preserve the trust fund or to avoid a reduction in the number of persons benefitted by the Act. *Jimenez v. Weinberger*, 94 S.Ct. 2496, 2500 (1974).

Jefferson v. Hackney recognized the right of the state to make the same kinds or judgments between different categories of public assistance. Thus the court upheld a

system of percentage reductions that favored the aged and infirm over recipients of AFDC. But this was the result of a firm policy decision, rationally based, that the former groups would be least able to cope with the hardships of an inadequate standard of living. No such judgment can be made between children because of their father's eligibility for a certain kind of income.

Lastly, in *Macias v. Finch, supra*, the plaintiffs challenged the federal definition of "unemployment" under which eligibility for ANFC-UF is determined by the number of hours worked rather than the amount of income earned. Plaintiffs claimed that a standard of unemployment which disregarded need was irrational.

The Court held that Congress could legitimately distinguish between the unemployed and underemployed and apply different solutions to the problems of each. The Court found a rational basis for the legislation in congressional efforts to maintain adequate wages for employed people through minimum wage laws and collective bargaining rights.

Marcias is obviously of no application here.

Should the Court find that 607(b)(2)(C)(ii) violates the due process clause of the Fifth Amendment, it should strive to give relief from an invidious imposition of inequalities:

> "Where a statute is defective because of under inclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggreived by exclusion. Cf. Skinner v. Oklahoma, 316 U.S. 535 (1942); Iowa-Des Moines National Bank v. Bennett, 284 U.S. 239 (1931)." *Welsh v. United States*, 398 U.S. 333, 361 (1970) (Mr. Justice Harlan concurring in the result).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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APPENDIX "A"

CHARACTERISTICS OF THE UNEMPLOYED PARENT SEGMENT OF STATE PROGRAMS FOR AID TO FAMILIES WITH DEPENDENT CHILDREN APPROVED AND IN OPERATION DEC. 1, 1966 (SUMMARY)

AID TO FAMILIES WITH DEPENDENT CHILDREN
SPECIAL CHARACTERISTICS RELATING TO UNEMPLOYMENT OF A PARENT

(The general requirements in a State apply also to families in need as a result of the unemployment of a parent. See Characteristics of State Public Assistance Plans: General Provisions - IA Report 30. The following table covers only the States' definition of unemployment as of June 30, 1966, which has been sent to the States for their validation of this definition.)

State (21)	Definition of unemployment
Arizona	Applies to the supporting parent (natural or legally adoptive). Unemployed parent--(a) Has had full-time employment for 5 of last 7 years immediately preceding date of application for assistance, i.e., averaging more than 20 hours per week for 40 weeks per year and is now not eligible for unemployment compensation; or (b) has completed training under Vocational Rehabilitation sponsorship, Manpower Development and Training Act of 1962, a project carried on under Title V of the Economic Opportunity Act of 1964; or has completed training in a recognized school; is seeking employment for the first time since completing the training; and is either ineligible to receive unemployment compensation or has exhausted unemployment compensation 30 days prior to date of application. In either case must have been registered with the State Employment Service for a minimum period of 30 days immediately preceding the date of application for assistance. Ineligible if dismissed for cause from most recent prior employment. Period of ineligibility is limited to 1 year from date of dismissal.
California	Applies to either parent (natural or adoptive); not working at all or employed only part time, i.e., has worked less than 173 hours of paid regular work per month, or less than the number of hours considered full time by the industry for the job (as established by the California State Employment Service (see below for provisions re: Part-time Farm Labor)); is available for and seeking employment, or receiving training essential to future self-support, or is working full time but is incapacitated to degree that he is able to accomplish less on a job than a normal person and is paid on reduced basis.

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Employment at farm labor affording irregular, temporary or intermittent work which provides no assurance of a dependable amount of income shall be presumed to be part-time employment. The presumption that farm work is part-time employment is overcome if: (a) the parent has worked for not less than 173 hours in each of the immediately preceding 3 months, and (b) the employment is expected to continue at or above this level of hours indefinitely beyond the next month.

If father employed full time, deprivation due to unemployment of mother is considered only if she was previously in labor market and/or has (a) a valid, workable plan for employment or training, (b) satisfactory child care plan, and (c) ability to work and care for family.

State	Definition of unemployment
California (Continued)	No provision relating to receipt of unemployment compensation. Unemployment ends when all of the following conditions are met: (a) the employment is expected to continue; (b) the unemployed parent has worked at least 1 full week, and (c) at least 1 full week's pay has been received before the end of the month. Three months' readjustment period allowable in AFDC upon return of absent or incapacitated parent but does not apply when deprivation due to unemployment of a parent ends.
Colorado	Applies to father or mother or both (natural or adoptive). Must have been unemployed for a period of 30 calendar days from his previously held full-time employment (173 hours per month unless the industry in which employed requires less than 40 hours per week); or has only part-time employment (less than 40 hours per week; eligible if part-time work of both parents combined is less than 40 hours per week); or is new to the labor market and is seeking employment. Parents are expected to seek employment actively from all sources in the community, including reasonably frequent contacts with Colorado State Employment Service, private employers who employ large numbers of people, and all other possible job openings. Ineligible if employment of parents (combined or individually) is 40 hours per week even if the income received is less than that specified to constitute need. Eligibility for or receipt of Unemployment Compensation does not affect eligibility except as amount of benefit received constitutes available income in determining need.

Connecticut	Either one or both parents (natural or adoptive), stepparent when natural or adoptive parent is in the home, actively engaged in labor market within 2 years prior to application, now available for employment, employable, and in search of work; on strike and without full-time employment; totally unemployed on date of application or date assistance authorized or partially unemployed (less than 5 days a week and/or 35 hours a week or less than number of hours considered full time by industry for job performed). Unemployable when health conditions, personality limitations or infirmities of age would preclude activities involved in competitive employment. If one parent is not available for employment as defined by State (including "regular full-time school attendance other than planned vocational education under this program"), family may be eligible on basis of unemployment of the other parent. Must apply for unemployment compensation. Under Connecticut Unemployment Compensation Law strikers are not eligible for benefits.
Delaware	Either parent (natural or adoptive) who are: (a) in the labor market but not currently employed; (b) not in the labor market previously but available and seeking employment, (c) employed part time (working less than 40 hours a week unless the number of hours employed is considered full-time employment by the industry for the job he is in) and are seeking additional or full-time employment. People who are not working because of a labor-management dispute and are actively seeking employment and are registered with the employment service are considered unemployed. Unemployment can apply to 1 parent in a family when the other parent is employed. Unemployed parent is one who: (a) has not worked for at least 1 week at the time of consideration, was and is able to work and available for work, is looking for work and is currently registered at the State Employment Service, or (b) is employed part time and is able and available to take full-time employment and is seeking additional work.
Hawaii	Either or both parents (natural or adoptive); must be able-bodied, not working or employed only part time (less than 173 hours a month), and available for full-time employment; applications for assistance from strikers or families of strikers accepted on same basis as other applications.

Unemployed workers shall file claims for unemployment insurance with Unemployment Compensation, Bureau Employment Security; amounts received considered as income in determining need.

Eligibility for unemployment compensation does not affect eligibility for AFDC-UP; amounts received are considered as income in determining need.

Illinois	Either parent (natural or adoptive): employable, unemployed or employed only part time, i.e., (1) neither self-employed nor working for an employer and is actively seeking work or is undergoing vocational education or re-training to enable him to obtain gainful employment, or (2) is employed less than 40 hours per week or less than the number of hours considered full time by the industry for the particular job. May include seasonally or self-employed parent, however, depending on his past practice or employment pattern. Includes a parent whose lack of employment is due to a bona fide strike at his place of employment. Unemployment means "absence of employment, or partial employment where earnings are insufficient to meet the needs of the family." Can apply to one parent in a family when the other is employed full time if income and available resources do not meet family needs. No requirement concerning receipt of unemployment compensation, any amount received from this source would be considered as income in determining need.

State	Definition of Unemployed
Kansas	Either or both parents (natural or adoptive); has been employed but currently unemployed, not previously employed but currently seeking work; has only part time and is seeking full-time work; has been self-employed but currently has no work; one parent unemployed and other employed part time and either or both are seeking full-time work. Includes a parent receiving training under Manpower Training Act if otherwise eligible. No requirement regarding receipt of unemployment compensation, any amount received from this source considered as income in determining need. Include if either or both parents are (1) fully employed (at least 40 hours a week or number of hours considered full time by industry for job performed) or (2) unemployed because of work stoppage caused by labor dispute at his place of employment or of last employment.

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Maryland	Father only (natural or adoptive); has no work at all or is employed only part time, i.e., less than number of hours which is customary for the particular job and for like jobs in the area; is actively seeking work; has current certification by Maryland State Employment Service that it is not possible to place him in a job; or is attending training sessions in order to acquire new skills which are in demand in labor market. Unemployed parent is one who is "able-bodied but without full-time gainful employment." May include a situation where father is unemployed and mother is employed. Ineligible if receiving unemployment insurance benefits except when the individual receiving it is enrolled in an educational and for training program to learn a new skill needed to have opportunity for employment, acquire a new skill which is in demand in the labor market, or improve an existing skill.
Massachusetts	Either or both parents (natural or adoptive); unemployed or employed only part time. An individual is deemed to be unemployed in any week in which he performed no wage-earning services, or works less than the normal weekly hours for his regular occupation and therefore has insufficient earnings to support his family. Not eligible for unemployment benefits because they (1) have exhausted such benefits, (2) have not sufficient coverage, or (3) have not worked in covered employment. Ineligible if parent (a) is receiving unemployment benefits or (b) is unemployed because he was discharged from job for "good cause" or left employment without "good cause."
State	Definition of unemployment
Michigan	Applies to the parent (natural or adoptive) of at least one of the children in a "family unit"; not applicable to mother or person acting in place of mother if youngest child in eligible group is less than 2 years of age. Not engaged in gainful employment (as defined by State) for more than 32 hours in any one week; employable, i.e., physically and mentally able to take employment actively seeking work and available for job interviews, referrals, and training opportunities.

	Ineligible if, without good cause, the parent left last full-time employment voluntarily or was discharged for misconduct connected with work within 90 days immediately preceding date of application. Agency assumes that parent left work voluntarily if termination of employment was due to a labor dispute in his place "of employment" whereas labor disputes involving a "supplier" of his place of employment does not affect the parents eligibility status. Unemployment compensation - Must register for Unemployment Compensation, where applicable, with the Michigan Employment Security Commission and report weekly either to draw benefits or protect claim status.
Nebraska	Parent (natural or adoptive) normally the major source of support for the family, with work history showing recent, regular full-time employment; actively seeking employment, has not refused suitable employment or training, has not become unemployed without good cause; currently totally unemployed or working less hours per week than number considered full time in the firm or place of employment; has been self-employed but no such work available or available only in limited quantities; participating in training or re-training program, receiving unemployment insurance which does not meet need in accordance with standards of assistance. Ineligible when unemployment results from stoppage of work due to a labor dispute at place of applicant's employment.
New York	Either or both parents (natural or adoptive) formerly employed full time or totally unemployed on date of application or employed less than 5 days per week or less than 35 hours per week; employable; available for employment, and actively seeking full-time employment; must explore through all employment resources in the community the availability of employment. Must apply for unemployment insurance benefits. If presumptively eligible for or still in receipt of unemployment insurance benefits, parent must report to State Employment Service as required.

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State	Definition of unemployment
Ohio	Either parent (natural or adoptive) physically and mentally able to work in suitable employment; unemployed or employed only part time, i.e., less than the number of hours considered full time by the industry in which employed, and actively seeking employment, unless family with one parent fully employed if family is in need and the other parent meets requirements. A parent who is seasonally employed is expected to show valid reason why past practices relating to off or slack periods are not adequate or available. Unemployment compensation - receipt of benefits does not affect eligibility for aid if financial need exists; amount of benefits is considered in determining amount of assistance payment.
Oklahoma	Either parent (natural or adoptive) who is head of the family and principal source of support; either (a) completely without employment, or (b) earning less than $30.25 monthly and working less than full time; earned at least $75 in one of past 2 years immediately preceding application or, if entering labor market for the first time during the past 12 months, is principal source of support for the family. Must be available for full-time employment or training. Must be physically and mentally able to work, ready and willing to engage in work which the applicant is qualified to do and physically able to perform. Ineligible if parent left his last work voluntarily without good cause connected with his work or was discharged for misconduct connected with his work, or left his work as a participant in a strike against the employer. Unemployment Compensation: Must have exhausted or be ineligible for unemployment insurance. The social worker in the Division of Family Services will make the determination of eligibility from the standpoint of unemployment and notify the county department of the decision. Title V--EOA: In counties having work training and experience projects under Title V of Economic Opportunity Act in operation, more liberal eligibility requirements apply: waive requirement that unemployed parent be "head of the family"; waive requirements on current monthly earnings and amount earned in preceding 2 years; waive requirements that person en-

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State	Definition of unemployment
	tering labor market be "principal source of support for the family"; and permit person to be available for part-time employment as well as training. Also permits receipt of unemployment compensation if such benefits do not meet his total need. Factor of unemployment eligibility may be determined locally without prior referral to State office.
Oregon	Either parent (natural or adoptive) able to work and seeking work whether or not he has ever been employed; able to work but receiving training considered essential to future support of his dependents; unemployed, i.e., less than 140 hours per month (40 hours in any week) unless the normal work week for the industry for which he is employed is less than 40 hours per week. Unemployment does not exist if 1) the parent has employment for the same number of hours as other persons working in the area and of work, or 2) the parent chooses to work less than 40 hours per week when he can work 40 hours. Eligibility continues if an unemployed parent becomes incapacitated but is expected (according to medical evidence) to be able to work within 3 months. Receipt of unemployment compensation does not affect eligibility if there is financial need, according to State Standards of assistance.
Pennsylvania	Either parent (natural or adoptive); must be employable, unemployed or is working only part time, i.e., less than 40 hours per week or work at less than the standard number of hours per week for the type of employment. May include family with one parent fully employed if the other is an employable person who is not employed or is employed only part time. Employability determined on individual basis, considering capacity, suitability or acceptability in the existing labor market. Unemployment compensation: Receipt of unemployment compensation does not affect eligibility except that amount received is considered as income in determining need.
Rhode Island	Either parent (natural or adoptive) unemployed or working part time (less than 35 hours a week or the number of hours considered full time by the industry for the job), has a potential for full-time employment; is actively seeking work and is available for education or job training or both. Ineligible if the one parent available for work is employed full time even though earnings are less than needed to support family. Includes persons who have been self-employed.

	Receipt of unemployment compensation does not affect eligibility except that amount received is considered as income in determining need.
Utah	Both parents; former employable labor market but not currently employed, not previously in labor market but seeking work, or currently employed only part time (less than 30 hours per week). If both parents employed part time, total hours of work must be less than 30 hours per week. Unemployment means principal wage earner has lost his employment in any employment activity in which he has customarily been engaged on a full-time basis (30 or more hours per week). Receipt of unemployment compensation does not affect eligibility except that amount received is considered as income in determining need.
State	Definition of unemployment
Washington	Either or both parents (natural or adoptive), employable but not working full time for an employer, i.e., less than the same number of hours as another person working in same work classification or less than 30 hours per week; absent from work because of industrial disputes, weather, or lay-off; financial need must be expected to last for more than 2 weeks from date of application. May apply to one-parent family if absent parent is unemployed and only temporarily absent while looking for work, intending to return. Unemployment compensation: Must apply for unemployment compensation including written verification of current unemployment compensation status.
West Virginia	Either parent employable but unemployed. Unemployed parent is one who (1) has never been employed or self-employed, (2) has not been employed full time or self-employed during effective month of approval, (3) is not working full time, i.e., 150 hours a month, or the number of hours considered to be full time by the industry for the particular job, (4) is actively seeking work, and (5) has not refused a bona fide offer of employment or voluntarily quit a full-time job or self-employment within the past 3 months. (Self-employed person may be considered unemployed if he has disposed of business equipment, retaining simple tools of a trade that would enable him to secure full or part-time employment in future.)

	Ineligible if discharged for good cause from last job unless the cause was physical or mental inability to do the job. Verification from last employer or potential employer is required to determine employment status. All provisions can apply to either parent, but employability of the mother not considered an eligibility factor if her employment would prevent the father from going to work or actively seeking work. Unemployment compensation: Is not receiving or is not eligible to receive unemployment compensation. Must apply for unemployment compensation benefits if eligible for them. Not applicable to parents who (1) were self-employed, (2) have worked primarily in agriculture, (3) are domestics, or (4) were employed by State and local governmental units since they are not eligible for such benefits.

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APPENDIX "B"

MEMORANDUM CONCERNING AVERAGE MONTHLY PAYMENTS UNDER AFDC-UF AND UNEMPLOYMENT INSURANCE

MEMORANDUM CONCERNING AVERAGE MONTHLY PAYMENTS UNDER AFDC-UF AND UNEMPLOYMENT INSURANCE

Since 1972, the Unemployment Insurance Program has changed in a number of states, effectively raising the maximum and average payments to levels that now exceed average AFDC-UF benefits, in 14 of the 25 states which have both programs (see Table 1). These 14 states represent 57.6 percent of the total number of AFDC-UF families, while the other 11 represent 42.4 percent. (In FY 1972, these percentages were 19 and 81 percent, respectively.)

During this period, the gap between maximum and average UI payments has decreased in most states and the percentage of claimants eligible for the maximum has increased (see Appendix A).

Additionally, since 1972, in several states a larger number of higher income workers are unemployed than previously. All of these factors have contributed to higher average payments and to relatively more payments at the higher end of the UI payment scale. Likewise, the use of UI average payments to discuss payments to a low income population (such as AFDC-UF recipients) raises a serious question of validity. Particularly, average and maximum UI payment levels are probably not valid bases for the statement in the Departmental brief concerning men qualified for benefits under both UI and AFDC: "*. . . it appears that males in this category can expect to receive at least as much, if not more, from unemployment compensation than from the AFDC-UF program.*"

TABLE 1

COMPARISON OF AVERAGE MONTHLY PAYMENTS UNDER UNEMPLOYMENT INSURANCE AND UNDER AID TO FAMILIES WITH DEPENDENT CHILDREN–UNEMPLOYED FATHER SEGMENT, FISCAL YEAR 1974[a]

	Monthly Family Payments AFDC-UF[b]	Monthly Payments Unemployment Insurance[c]	Amount AFDC-UF Payment Exceeds UI Payment (Col. 1 minus Col. 2)
California	262.03	266.04	- 4.01
Colorado	266.39	307.52	- 41.13
Delaware	158.47	293.66	- 135.19
D.C.	190.05	350.12	- 160.07
Hawaii	355.78	306.04	+ 49.74
Illinois	321.16	278.76	+ 42.40
Iowa	327.17[d]	272.57	+ 54.60
Kansas	249.24	260.19	- 10.95
Maryland	212.33	266.51	- 54.18
Massachusetts	335.96	290.02	+ 45.94
Michigan	348.24	269.37	+ 78.87
Minnesota	331.87	279.28	+ 52.59
Missouri	148.15[e]	238.24	- 90.09
Nebraska	229.90	245.68	- 15.78
New York	372.62	266.55	+106.07
Ohio	212.29	295.91	- 83.62
Oklahoma	231.22	196.45	+ 34.77
Oregon	267.12	238.11	+ 29.01
Pennsylvania	269.92	307.43	- 37.51
Rhode Island	279.82	275.69	+ 4.13
Utah	264.44	264.78	- .34
Vermont	317.84	266.42	+ 51.42
Washington	283.52	274.91	+ 8.61
West Virginia	217.94	199.53	+ 18.41
Wisconsin	364.15	297.99	+ 66.16
Weighted average[f]	285.70	274.59	-

[a]Only those states with both programs are included.

[b]Compiled from monthly *Public Assistance Statistics*, Report Series A-2, USDHEW, National Center for Social Statistics.

[c]Unpublished data supplied by State Employment Security Agencies to U.S. Department of Labor, Manpower Administration.

[d]Data represent six months, January - June, 1974.

[e]Data represent nine months, October 1973 - June 1974.

[f]U.S. Average represents the twenty-five states shown.

Average payments reflect benefits paid to a substantial number of unemployed persons who are not eligible for AFDC-UF by virtue of their family wealth, many of whom receive the maximum allowable UI benefits, creating an inflated average for the population of concern here. The inclusion of these beneficiaries in the computation of an indicator for payment levels to beneficiaries also eligible for AFDC-UF is invalid.

Who, then, are these fathers that are dually eligible? A person eligible for both UI and AFDC-UF is a family head, with two or more dependents, who prior to applying for AFDC-UF worked in insured employment. At the time he lost his job his income had been high enough to meet the minimum requirements under UI (at least $600 during the previous year in Vermont), yet his assets and other resources are meager enough to meet the AFDC-UF resource limitations. For example, in Vermont, a family can own its own home[1] (though less than ten percent of AFDC recipients do), have up to $1,800 in other real and personal property, liquid reserves, cash or savings, a life insurance policy with a face value not greater than $1,100, an automobile, and $1,500 worth of tools, equipment, and livestock. (Other states have similar limitations. See Appendix B for a state by state listing.) This is not a well-off family.

In their 1973 nationwide study of AFDC families, the U.S. Department of Health, Education and Welfare

[1]At low income levels, home equity is so small that for only seven percent of poor persons would family income rise above the poverty line if this resource were liquidated over five years. Federal Reserve Board, *Survey of Financial Characteristics of Consumers*, August 1966, p. 39.

found that 60.1 percent of unemployed male family heads[1] worked in blue collar jobs. Nearly 48 percent were in the lowest-paying occupations—as laborers or clerical or private household workers.[2] Over 44 percent had not completed the eighth grade and two-thirds had not finished high school.[3] (See Appendix C for state by state numbers on each of these characteristics.)

Although nearly half of the employed fathers worked full time, their earnings were strikingly low: nearly three-quarters earned incomes below the poverty line for a family of four ($4,300 in 1973). Monthly and equivalent annual incomes are shown in Table 2 below.

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[1]About 80 percent of these men were AFDC-UF recipients.

[2]USDHEW, National Center for Social Statistics, *Findings of the 1973 Study Part I Demographic and Program Characteristics*, 1974, pp. 78 and 79.

[3]*Ibid*, p. 72. About 45.8 percent are black, 13.4 percent of Spanish origin or descent, 1.1 percent American Indian, and 38.0 percent other/white. Ibid., p. 25.

TABLE 2

MONTHLY EARNED INCOME OF AFDC FATHERS, JANUARY 1973[a]

Monthly income	Percent of fathers	
$1-24	7.0	
25-49	6.9	
50-74	6.1	
75-99	7.2	
100-149	15.2	
150-199	7.8	
200-249	5.8	
250-299	5.6	
300-399	10.9	← U.S. poverty line-
400-499	12.7	family of 4 ($4,550)
500 and over	14.7	
	100.0	

Source: USDHEW, National Center for Social Statistics, *Findings of the 1973 AFDC Study Part II–Financial Circumstances*, p. 58.

[a]About 80 percent of these fathers are AFDC-UF recipients.

All of these characteristics indicate that AFDC fathers are at the low end of the distribution of male workers, in terms of education, jobs, and earnings. Any comparison of their UI benefits with benefits of workers for AFDC at the least must only include UI beneficiaries in comparable income groups.

In the same study, DHEW asked respondents whether they had received benefits under Unemployment Insurance during the survey period and, if so, how much. (Unemployed fathers who had transferred from one program to the other would answer positively; no state permits receipt of both program benefits simultaneously.) These unemployed fathers, all of whom were currently recipients of AFDC-UF, reported median monthly UI payments of $150.00,[1] about 57.7 percent of the average Unemployment Insurance payments nationwide of $256.12 that month (see Table 3). At the same time, the median AFDC-UF payment was $272.87,[2] $125 above the UI payment. The distribution of payments under both programs is shown in Table 3 and in Chart 1.

This disparity was not unique to 1973. In their earlier biennial surveys in 1967, 1969, and 1971, DHEW found that AFDC recipients who had recently received UI payments received UI amounts equal to 64.2 percent, 71.7 percent, and 73.5 percent of the AFDC payments they later received (see Table 4). UI payments are *declining* relative to AFDC-UF payments for this population.

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[1]USDHEW, National Center for Social Statistics, unpublished information from the 1973 Survey. The average (which is not available yet) would be slightly higher than the median.

[2]*Op cit.*, 1973 Survey, unpublished data.

TABLE 3

AFDC-UF AND UNEMPLOYMENT INSURANCE PAYMENTS TO AFDC-UF BENEFICIARIES, JANUARY 1974, NATIONWIDE

Monthly Payments	Percentage of Families: AFDC-UH	Percentage of Families: Unemployment Insurance
$1-49	.8	0
50-74	.7	28.6
75-99	1.3	14.3
100-149	2.6	7.1
150-199	12.3	0
200-249	22.6	21.4
250-299	19.3	0
300-399	29.6	28.6
400-499	8.8	0
500 and over	2.0	
	100.0 (N=119,795)	100.0 (N=11,812)

Source: USDHEW, National Center for Social Statistics, unpublished findings from the 1973 AFDC Study.

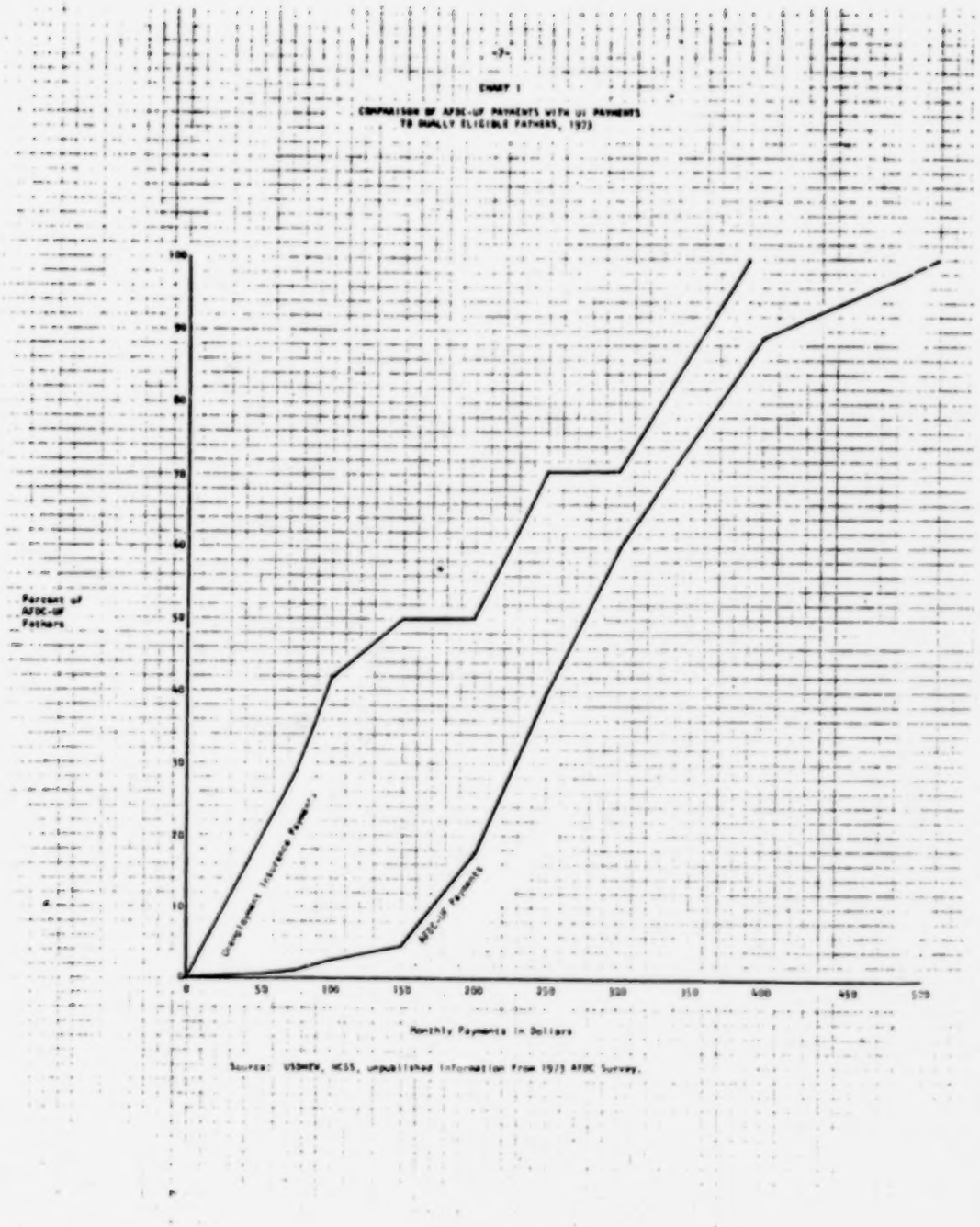

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TABLE 4

COMPARISON OF UI PAYMENTS TO AFDC-UF RECIPIENTS WITH UI PAYMENTS TO ALL RECIPIENTS AND AFDC-UF PAYMENTS JANUARY 1973

Month and Year	Unemployment Insurance Payments to Subsequent AFDC-UF Recipients			UI Payments Nationwide (to all Recipients)	AFDC-UF Payments
	Payments	Percentage of Average AFDC-UF Payments	Percentage of Average UI Payments		
January 1967	$133.80[a]	64.2	74.05	180.69[b]	208.55[c]
January 1969	171.53[d]	71.7	85.8	199.87[e]	239.10[f]
January 1971	178.66[g]	73.5	76.3	234.07[h]	243.00[i]
January 1973	147.83[k]	54.2	57.7	256.12[k]	272.87[l]

[a]USDHEW, National Center for Social Statistics, *Findings of the 1967 AFDC Study: Data By State and Census Division, Pt. II, Financial Circumstances*, Report AFDC-4 (67), August, 1970, Table 99.

[b]Telephone interview, USDOL, Manpower Administration official, December 20, 1974. (Taken from *Unemployment Insurance Statistics*, Manpower Administration.)

[c]USDHEW, National Center for Social Statistics, *Unemployed Parent Segment of AFDC, January 1967*, 1967.

[d]USDHEW, NCSS, *Selected Statistics Data on Families Aided and Program Operations*, Report NCSS-4 (71), June 1971, Table 61.

[e]See footnote[b].

[f]*Op cit., Public Assistance Statistics*, January 1969, Table 8.

[g]USDHEW, NCSS, *Findings of the 1971 AFDC Study Part II, Financial Circumstances*, 1971, Table 56.

[h]See footnote[b].

[i]*Op cit., Public Assistance Statistics*, January 1971, Table 8.

[j]Represents the median, probably lower than the average. Unpublished information from the 1973 AFDC Study, USDHEW, NCSS.

[k]See footnote[b].

[l]*Op cit., Public Assistance Statistics*, January 1971, Table 8. (This figure is nearly identical to the finding of the January 1973 AFDC Survey.)

Their UI payments in these earlier years were also considerably below the national average UI payments at the time. In the three years, their UI payments were 74.05 percent, 85.8 percent, and 76.3 percent of national averages (see Table 4).

There is little reason to believe that the distribution of payments has altered much since January 1973. In the interim, average AFDC-UF and average UI payments have increased nationwide about $29 and $26 per month, respectively. Under UI, the percentage of average wages paid in benefits has increased slightly, and in most states the percentage of claimants eligible for the maximum has increased (see Appendix A). But these factors have little effect on recipients at the lower wage levels. AFDC-UF income and resource limitations have not changed in most states since 1973,[1] effectively limiting eligibility to an even lower-income segment of the population, as incomes rise in general. Consequently, AFDC-UF eligible families may now receive UI benefits even further below the rising UI average than in 1973.

Respectfully submitted,

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[1] Telephone interview USDHEW, Assistance Payments Administration official, December 19, 1974.

Appendix A

PERCENTAGE OF UNEMPLOYMENT INSURANCE CLAIMANTS ENTITLED TO MAXIMUM WEEKLY BENEFITS

(In Percentages)

State	January-March 1972	January-March 1974
Michigan	72.2	80.6
Ohio	71.5	57.0
Iowa	70.2	67.6
Nebraska	64.9	60.7
Missouri	59.1	55.2
Washington	58.7	37.8
Kansas	58.1	52.5
Minnesota	57.4	58.5
Delaware	54.2	46.1
Oregon	51.3	50.8
Vermont	48.0	46.9
Massachusetts	47.4	41.0
Illinois	45.9	65.8
New York	43.9	50.4
Wisconsin	42.6	20.0
Maryland	41.1	45.5
Hawaii	37.5	27.2
Oklahoma	35.8	41.3
Utah	34.9	37.1
California	34.5	28.1
Rhode Island	-[b]	32.4
Pennsylvania	32.8	30.0
District of Columbia	26.8	32.1
Colorado	20.5	56.4
West Virginia	19.6	10.1

[a] U.S. Department of Labor, Manpower Administration, Unemployment Insurance Statistics, January-March 1972 and January-March 1974

[b] Data not available.

Appendix B

Property and Income Limitations under AFDC

Source: USDHEW, NCSS *Characteristics of State Public Assistance Plans under the Social Security Act.* Public Assistance Report No. 50 1973.

Item: 7. Property and Income Limitations
Program: AFDC
No. of Programs: 54

COMPILATIONS BASED ON CHARACTERISTICS OF STATE PUBLIC ASSISTANCE PLANS: GENERAL PROVISIONS IN EFFECT JANUARY 31, 1973

Property and Income Limitations in Determining Eligibility

Federal requirement: One of the conditions for approval of State Public Assistance Plans and for Federal financial participation in Aid to Families with Dependent Children is that the State Plan must provide for consideration, in determination of the need of a claimant of assistance, of any income and resources that he may have. The provisions tabulated below do not include the permissible or the required disregarding of certain earned or other income.

I. Provisions on Ownership of Property Used as Home 1/

Makes no separate evaluation of home; includes it in total of both real and personal property.....1 State

Missouri

Evaluates home with all real property, usually against a maximum applied only to real property.....4 States

California	Minnesota	New York	Tennessee

Evaluates home separately against a maximum applied only to the home property.....11 States

Alabama	Connecticut	Kansas	Oklahoma
Arizona	Guam	Mississippi	Wyoming
Arkansas	Hawaii	Montana	

Considers home separately but specifies no maximum for home property.....38 States

Alaska	Kentucky	New Mexico	South Dakota
Colorado	Louisiana	North Carolina	Texas
Delaware	Maine	North Dakota	Utah
D. C. x	Maryland	Ohio	Vermont
Florida	Massachusetts	Oregon	Virgin Islands
Georgia	Michigan x	Pennsylvania	Virginia
Idaho	Nebraska	Puerto Rico	Washington
Illinois	Nevada	Rhode Island	West Virginia
Indiana	New Hampshire	South Carolina	Wisconsin
Iowa x	New Jersey		

1/ For figures assigned to value of home or other specified limitations on the home see page 2a, AFDC Chart, of this same item.
x Other special provision; refer to published document.

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Item: 7. Property and Income Limitations
Program: AFDC, page 2a
No. of Programs: 54

STATE LIMITATIONS ON REAL PROPERTY AND PERSONAL PROPERTY WHICH AFFECT ELIGIBILITY FOR AID TO FAMILIES WITH DEPENDENT CHILDREN, JAN. 31, 1973

State	Real Property--Interested Value & Equity (Market Value Limit to occupied home)	Other Real and Personal Property (Combined)	Other Real Property (Non-Home)	Personal Property--Negotiable Assets, Stocks, Bonds, and Other Liquid Reserves	Cash or Savings	Insurance and Burial: Life Insurance (Cash Value / Face Value)	Insurance and Burial: Burial Insurance or Pre-paid Contract	Value Excluded From Consideration as Assets--Household & Personal Effects	Value Excluded From Consideration as Assets--Car or Cars for Transportation	Value Excluded From Consideration as Assets--Tools, Equipment, Livestock
	(4)	(5)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Ala.	$ 3500 E	$1000						Exempt		
Alaska	0 - No Maximum	$1000 1/			$ 500	1/ C				Livestock
Ariz.	$ 5000 E	$ 500 - one $ 1000 - family 2/		$ 500 - one $ 1000 - family 2/	2/			Exempt		$ 250-Tools
Ark.	$ 5000 to $ 7500 M 3/	$ 750 - one $1500 - family				$1000 E			$ 350 - Car	Livestock
Calif.	0 - $ 5000 E (All real property	$1500 - $1000 1/		$ 600 - family x 4/		$1000 4/ C	4/	Exempt x	$1500 Car 4/	
Colo.	0 - No Maximum	$1500 - one $2000 - family								
Conn.	0 - $15,000 E		5/	1 prp 1/		1/ C		Exempt	Car	Income-Producing
Del.	0 - No Maximum		6/	Not to exceed one Month's needs		$1500 Per Person C	or $1500	Exempt	Car	Exempt
D.C.	No Maximum		7/		$ 500 - one 8/ $ 500 - family		8/	Exempt	$1500 - Car 1/	Exempt
Fla.	0 - No Maximum 22/x	$1000 - Income Prod. x 11/ $ 500 - family x 12/				$1000 - x Per Person E		Exempt		Livestock
Ga.	0 - No Maximum x	$ 500 - family 12/				$1000 E		Exempt	Car - 1 yr old 2/	Income-Producing
Guam	0 - $12,000 M		13/	No Limit 1/		1/ C		Exempt	Car	
Hawaii	0 - $15,000 14/		$ 500 15/	Not to exceed 14/		15/ C				
Idaho	0 - No Maximum	$2000 16/	16/	$ 500 16/		16/ C				
Ill.	0 - No Maximum	$ 500 - one 17/ $ 1000 - family			17/	$1000 - Per Person E	Cemetery lot	Exempt	Vehicles	Income-producing
Ind.	0 - No Maximum	$ 500 - one $ 1000 - family	6/	$ 500 - family 17/ $ 350-chn.only x		1/ C		Exempt	Cars	Exempt
Iowa	0 - No Maximum x	$ 500 - one $ 1000 - family			17/	$1000 - Per eligible x E		Exempt	$2500-Cars	
Kans.	0 - Homestead Value $ 20 M for 4 persons 3	$ 500 - one $1000 - family				$ 500 - child $1000-adult E	or Death Benefits	Exempt	Car 1 yr. old 2/	Exempt
Ky.	0 - No Maximum x		$1000 x 13/	$1000 - one child $2000 - family x		$ 500 - child $1000-adult E		Exempt	Cars	Exempt
La.	0 - No Maximum $6000 - Rural	$ 500 - one $1000 - family 18/	(If income-producing)			1/		Exempt 18/		
Maine	0 - No Maximum					$1000 - Per Person E	or $1000 - Prepaid	Exempt	Car	Exempt
Md.	0 - No Maximum				$ 300	$1000-ea. child $1000-adult F		Exempt	Car	Exempt
Mass.	0 - No Maximum		20/	$1000 x					1 Car	
Mich.	0 - No Maximum $ 7500 E	$1500 - one $2000 - family		$ 500 - Portfolio $ 500 - one child $ 500 - family		$1000 - family C		Exempt	1 Car 21/	$ 750 21/
Minn.	All real property					$ 500 - Per Insd. C	$750 each + 20% interest	Exempt		Exempt
Miss.	0 - $ 5000 - one x ($7500 Rural Owner)	$ 500 - 1 child $1000 - family						Exempt	$1000 - Car	
Mo.	$10,000 M 22/	$1500 22/				$1000 - Per Person F	or $1000 - Prepaid			

For footnotes see following pages.

Item: 7. Property and Income Limitations
Program: AFDC, page 2b
No. of Programs: 54

State Limitations on Real Property and Personal Property Which Affect Eligibility for Aid to Families With Dependent Children, Jan. 31, 1973. Page 2

State	Real Property--Interested Value & Equity (Market Value Limit to occupied home)	Other Real and Personal Property (Combined)	Other Real Property (Non-Home)	Personal Property--Negotiable Assets, Stocks, Bonds, and Other Liquid Reserves	Cash or Savings	Insurance and Burial: Life Insurance (Cash Value / Face Value)	Insurance and Burial: Burial Insurance or Pre-paid Contract	Value Excluded From Consideration as Assets--Household & Personal Effects	Value Excluded From Consideration as Assets--Car or Cars for Transportation	Value Excluded From Consideration as Assets--Tools, Equipment, Livestock
	(4)	(5)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Miss.	0 - Under $5000 x A		Under $1000 x	$ 500 - one $ 1000 - family		$5000 - Per Person F	$1000 - person Irrevocable		$1500 - Car 5/	
Mont.	0 - No Maximum					$1000 - Per Person C		Exempt		$1000 21/
Nebr.	0 - No Maximum					1/ C		Exempt	Car	
Nev.	0 - No maximum 23/		6/	$ 500 - family		$5000 - Family F		Exempt	Exempt	Exempt
N.H.	0 - No Maximum x		24/	One motor vehicle 1/				Exempt	$500 - Car	Exempt
N.J.	0 - No Maximum		25/ x	$1000 25/	$ 100 - one 25/ $ 150 - family 25/	$500 - 25/ Family C		Exempt	Car	Exempt 26/
N.M.	No Maximum				$1,000-(child's trust fund) x	$ 500 - F Per Person x		Exempt		Exempt
N.Y.	0 - No Maximum x					1/ C		Exempt 27/	$1000 - Car E	
N.C.	0 - No Maximum - 28/			$1000 29/	$ 350	Value not exceeding $1000 C		Exempt		29/
N.D.	0 - No Maximum					1/Amount per. agt. $1000 E C		Exempt	$500 1/	Income-producing
Ohio	0 - No Maximum					31/	$1000	Exempt		
Okla.	0 - No Maximum				$ 500 - one $1000 - family	$1000 - Per Person C	or Burial Funds	Exempt	Car	
Oreg.	0 - No Maximum		32/		32/					
Pa.	0 - No Maximum		33/		$1000 x			Exempt	Car	Livestock, Poultry
P.R.	0 - No Maximum		$ 500 - Personal Property		$ 500 - one $1000 - family				Car	
R.I.	0 - No Maximum			1/		1/ C				
S.C.	0 - No Maximum		34/	$ 500 - Personal Property x		$1000 - family C		Exempt	Car - 1 yr. old 2/	
S.D.	0 - No Maximum		35/	$ 500 - one $1000 - family		$ 500 - Per Person C	or $1000	Exempt	Car - $1000 or less x	Income-producing
Tenn.	0 - No Maximum					$1000 - Per Person F	or $1000	Exempt	Car - 1 yr. old 2/	Exempt
Texas	0 - No Maximum					$1000 - family C		Exempt	Car	
Utah	0 - No Maximum					$1000 - Per Person F		Exempt	Car	1 Car 21/
Vt.	0 - No Maximum					1/ C	Irrevocable Trusts	Exempt	Car - $1000 or less x	
Va.	0 - No Maximum					1/ C			Car - 1 yr. old 2/	
Wash.	0 - No Maximum					1/			Car (1 yr. old 2/)	Exempt

1/ See footnotes and following page, 2.

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Item: 7. Property and Income Limitations
Program: AFDC, page 2 c
No. of Programs: 54

Footnotes to chart on "State Limitations on Real Property and Personal Property Which Affect Eligibility for Aid to Families with Dependent Children, Jan. 31, 1973"

x See published document for details.

1/ Includes cash or face value of insurance without specifying a figure for value of of insurance.

2/ Included in over-all limitation on real and personal property (Col. 2).

3/ Depending upon location of the house.

4/ Includes $600 liquid assets and $100 cash surrender value of insurance or burial arrangements; exempts child's share of an undistributed estate.

5/ California - car up to $1500 in value, if needed for approved employment plan; Georgia - requires that car be needed for transportation to work; Montana - value specified may be exceeded in certain circumstances if car essential for employment or transportation.

6/ Other real property must be liquidated; in Delaware, unless producing income related to its value; in Indiana, unless rented; in New Hampshire, 6 months allowed for disposal if property unoccupied and not producing income.

7/ Non-residence real property is considered a resource liable to conversion to cash within a reasonable time.

8/ Plus money given or bequeathed specifically for burial.

9/ More valuable car must be sold; car limitation does not apply to recipient needing assistance less than 60 days.

10/ House, trailer, or boat lived in or owned by recipient; homestead is defined by County Tax Assessor.

11/ If a child is living with a relative other than his parents who is financially independent, maximum is $600 per child up to $1200 for a sibling group.

12/ May hold specified income-producing resources up to $1000 market value in addition.

13/ Additional real property up to a specified value may be held in these States if producing income: Guam, $3000, market value; Kentucky, up to $5000 equity if producing income; Tennessee, value included in over-all real property amount of $9000; Virgin Islands, $1500, assessed value, real and personal property; Virginia, $5000, plus $400 non-income producing property.

14/ "Tax appraised value." (Hawaii currently appraises property for tax purposes at 70% of market value.)

15/ No maximum is set on total, but values for items of personal property are specified; cash value of insurance and any other cash reserve must be utilized.

16/ Combination of all negotiable assets may not exceed $2000 in value, including cash value of insurance, up to $500 of liquid resources, and value of marketable real property other than the home; excludes real property, other than home, which is non-marketable.

17/ Savings from earnings of children are exempt; Illinois, specifies children in high school and requires plan for future education or vocational training.

18/ Also exempts jewelry up to $100 or of sentimental value and musical instruments.

19/ When equity in saleable real property exceeds this figure, immediate steps must be taken to sell property or "dispose of excess amount."

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Item: 7. Property and Income Limitations
Program: AFDC, page 2d
No. of Programs: 54

Footnotes to chart on "State Limitations on Real Property and Personal Property Which Affect Eligibility for Aid to Families with Dependent Children, Jan. 31, 1973" (continued)

20/ Reasonable efforts must be made to dispose of non-home real property.

21/ Exempt if necessary for an approved employment plan; in Michigan, exemption applies to car if family does not qualify for $750 exemption of farming equipment.

22/ All real and personal property is limited to $10,000. Within this total, family may have reserves of $1500 including cash value of insurance, market value of non-home real property, and certain personal property including cash or securities.

23/ If value exceeds $20,000 (based on 100% assessment) an evaluation and recommendation is made regarding disposal.

24/ No specific limitations on other real property, or on personal property not convertible to cash, but plans for liquidation of such real property within 6 months must be initiated as an eligibility condition.

25/ May be held pending liquidation or demonstration of unsaleability; in New Mexico, modified by specific conditions such as illness of client or repeated efforts to sell; in Puerto Rico, a period of 12 months in which to put the property to some use or to dispose of it; in Washington, must be offered for sale unless it cannot reasonably be sold, rented or leased.

26/ The $1200 maximum includes liquid assets and cash, cash surrender value of life insurance, and farm tools and equipment.

27/ Equity in loan value of non-essential vehicles and non-essential personal property, such as cameras and television sets, is considered as a reserve.

28/ Maximum value is determined by size and needs of family.

29/ Personal property essential to a person's or a family's rehabilitation is exempt from the $1000 limitation.

30/ Exempt up to $1000 value if car is used in producing income; in Tennessee, car exempt if producing $60 yearly net income.

31/ If child is not living with parents, amount is $250 for 1 child, $400 for 2 children, plus $50 for each additional child up to $600, family maximum. Maximums include cash surrender value of life insurance; but increases in cash or loan value due to interest or dividend accruals up to $1000 per insured individual may be held if left on deposit with company.

32/ No maximum on life insurance for children under age 18.

33/ If accumulated from earned income.

34/ Considered a resource in determining eligibility.

35/ May own homestead as defined in State law, made applicable to AFDC by administrative policy.

36/ Combination of all negotiable assets must not exceed $750 for individual and $1,450 for 2 persons, with $50 additional for each added family member; these maximums include cash, securities, cars, and insurance.

37/ Limitation $1000 if car needed for access to medical treatment or employment purposes, and no limitation if aid temporary.

Item: 7. Property and Income Limitations
Program: AFDC, page 3
No. of Programs: 54

III. Provisions Prohibiting Transfer or Other Disposition of Property Without Adequate Consideration Prior to Application

States with no specific provision.....24 States

Alaska	Hawaii	Massachusetts	Puerto Rico
Colorado	Illinois	Minnesota	Tennessee
D. C.	Indiana	Nevada	Virgin Islands
Florida	Iowa x	New York	Virginia
Georgia	Louisiana	North Carolina x	West Virginia
Guam	Maine	North Dakota	Wisconsin

x Special provision; see published document.

States with such provision, no time limit specified.....11 States

California	Kentucky	Ohio	Vermont
Connecticut 1/x	Nebraska	South Carolina	Washington x
Idaho	New Jersey	Texas	

1/ Provision relates to supervising relative if legally responsible and included in assistance group. Also, any disposal of real or personal property must be examined to determine the effect on eligibility.
x Other special provision; refer to published document.

States prohibiting such transfer or assignment within a specified number of years prior to receiving assistance.....19 States

State	Years	State	Years
Alabama	1 1/ x	Montana	5
Arizona	5	New Hampshire	5
Arkansas	5 x	New Mexico	2 x
Delaware	2 2/	Oklahoma	5
Kansas	5 x	Oregon	3 3/
Maryland	3	Pennsylvania	2 2/
Michigan	90 days	Rhode Island	5 3/
Mississippi	2	South Dakota	3 x
Missouri	5	Utah	5
		Wyoming	2

1/ Provision applies to "homestead above $2500 or other property worth $2000."
2/ Applies only to property worth $500 or more.
3/ Applies only to transfer of real property.
x Other special provision; refer to published document.

Summary: Within 5 years: 9 States
Within 3 years: 3 States
Within 2 years: 5 States
Within 1 year : 1 State
Within 90 days: 1 State

Appendix C

Characteristics of AFDC Families with Fathers

Source: USDHEW, NCSS, *Findings of the 1973 AFDC Study Part I. Demographic and Program Characteristics*, pp. 25, 72, 78 and 79.

TABLE 9.--AFDC FAMILIES, BY RACIAL/ETHNIC GROUP OF PAYEE, 1973

SPECIFIED HEW REGION AND STATE	TOTAL FAMILIES	OTHER THAN WHITE, AND SPANISH: TOTAL	NEGRO/ BLACK	AMERICAN INDIAN	SPANISH ORIGIN/ DESCENT	OTHER	WHITE	UNKNOWN
TOTAL: NUMBER	2989891	1510770	1360552	35596	399727	14502	1335936	37185
PERCENT	100.0	50.8	45.8	1.1	13.4	0.5	38.0	1.2
HEW REGION: II	529049	73.2	36.1	0.3	16.6	0.3	23.6	3.3
III	335952	59.4	57.1	0.2	2.1	#	38.5	2.1
IV	458017	21.1	21.0	0.1	0.4	#	74.7	0.1
V	614944	54.7	49.7	0.3	4.8	0.2	44.4	0.7
VI	259455	79.4	56.6	2.0	21.1	#	20.1	0.1
VII	121641	42.6	40.7	0.7	1.4	#	57.1	#
VIII	83278	40.3	29.2	10.1	24.1	0.2	19.4	0.5
IX	466296	54.7	47.5	1.7	22.9	2.5	42.2	1.2
STATE: ALABAMA	45531	78.8	78.1	#	0.0	0.0	21.2	0.0
ARIZONA	19680	71.7	36.1	25.6	29.9	#	27.6	0.0
ARKANSAS	23305	68.0	67.7	#	#	0.0	32.0	0.0
CALIFORNIA	411492	59.1	29.7	0.9	23.0	0.5	39.7	1.2
COLORADO	31874	52.9	31.5	0.7	20.7	#	46.1	#
FLORIDA	94622	74.3	72.6	#	1.8	0.0	25.5	#
GEORGIA	99718	76.6	76.5	0.0	#	0.0	23.3	#
ILLINOIS	193107	72.4	63.3	#	8.8	0.3	27.1	#
INDIANA	49526	46.2	44.4	#	1.7	0.0	53.5	#
IOWA	21895	13.3	11.0	0.0	1.4	#	86.5	#
KANSAS	20189	39.2	34.5	0.7	4.4	#	60.7	#
KENTUCKY	42282	30.8	30.8	0.0	0.0	0.0	69.0	0.3
LOUISIANA	65125	84.5	83.9	#	#	0.0	15.3	#
MARYLAND	61578	70.2	68.6	0.6	0.8	0.0	29.1	0.6
MICHIGAN	160215	51.5	48.4	1.1	1.8	#	47.4	#
MINNESOTA	37550	17.1	9.4	5.2	2.1	#	82.7	0.2
MISSISSIPPI	46414	87.7	87.4	#	0.0	0.0	12.3	0.0
MISSOURI	67699	54.5	54.3	0.0	#	0.0	45.5	0.0
NEBRASKA	11632	36.5	27.1	4.7	3.5	#	63.4	#
NEW JERSEY	114805	67.8	50.9	0.6	15.6	0.5	31.4	0.9
NEW YORK	356294	70.6	39.8	0.2	30.6	#	29.4	4.5
NORTH CAROLINA	43891	78.3	75.8	2.2	#	0.0	21.7	0.0
NORTH DAKOTA	4013	26.3	#	25.2	0.5	#	73.7	0.0
OHIO	137164	51.7	49.8	#	1.4	#	47.7	0.7
OKLAHOMA	29214	46.3	35.7	9.8	2.6	#	51.3	#
PENNSYLVANIA	169766	50.5	45.7	#	4.7	0.0	45.3	4..
RHODE ISLAND	14581	21.2	16.9	#	4.0	#	78.8	2.1
SOUTH DAKOTA	6356	43.9	#	43.3	#	0.0	56.0	
TENNESSEE	56605	63.0	62.7	#	#	#	36.6	
TEXAS	120412	66.7	52.1	0.0	14.6	0.0	33.3	0.
VIRGINIA	46958	71.0	70..	0.0	#	0.0	29.0	0.
WEST VIRGINIA	20517	11.3	10.9	0.0	#	#	88.7	0.
WISCONSIN	41594	39.9	33.4	2.6	3.5	#	60.8	

NOT COMPUTED; BASE TOO SMALL.

TABLE 43.—AFDC FAMILIES WITH NATURAL OR ADOPTIVE FATHER IN HOME, BY HIGHEST GRADE OR LEVEL OF SCHOOL COMPLETED BY FATHER, 1973

SPECIFIED HEW REGION AND STATE	TOTAL OF SUCH FAMILIES	HIGHEST GRADE OR LEVEL OF SCHOOL COMPLETED: NONE, OR LESS THAN 5TH GRADE	5TH OR 6TH GRADE	7TH GRADE	8TH GRADE	9TH GRADE	10TH OR 11TH GRADE	HIGH SCHOOL GRADUATE	SOME COLLEGE; DID NOT GRADUATE	COLLEGE GRADUATE	UNKNOWN
TOTAL: NUMBER	379048	68595	31650	19758	49369	25915	55981	40537	13967	2470	44276
PERCENT	100.0	18.1	8.3	5.2	13.0	6.7	14.8	10.7	3.7	0.7	11.7
HEW REGION: II	72337	26.0	7.4	2.9	7.0	4.3	11.4	9.5	1.2	#	29.4
III	48846	9.2	9.8	8.1	18.9	12.9	16.3	14.5	1.3	0.0	19.1
IV	63376	17.1	10.2	8.1	13.0	8.5	6.9	4.6	1.1	#	17.3
V	83593	7.2	6.5	5.3	16.7	7.6	22.2	10.1	3.6	0.5	12.2
VI	25192	37.0	15.6	7.2	4.7	5.1	9.3	4.7	2.4	#	9.1
VII	11371	13.2	12.8	4.9	25.4	4.1	12.4	5.4	4.9	#	13.1
VIII	6853	8.4	6.4	7.4	14.5	8.5	23.3	19.9	5.7	#	5.3
IX	67488	14.7	5.8	5.7	8.9	6.3	15.3	11.1	13.2	#	25.4
STATE: ALABAMA	3826	37.6	16.6	#	#	#	9.7	6.9	#	3.0	19.4
ARIZONA	2517	46.8	12.8	7.6	9.7	#	5.5	9.7	#	3.0	5.5
ARKANSAS	3097	50.6	23.7	5.4	13.2	#	#	#	3.3	3.0	#
CALIFORNIA	57401	13.6	#	#	9.3	6.8	16.1	11.0	13.7	#	24.6
COLORADO	5046	11.4	8.3	6.8	12.9	6.0	19.7	22.0	4.5	#	3.4
FLORIDA	5720	27.4	#	15.7	#	#	#	#	#	#	31.3
GEORGIA	8078	34.6	11.5	11.4	14.3	8.6	#	#	3.3	3.0	7.1
ILLINOIS	20045	8.6	9.4	5.5	24.2	5.5	21.1	14.7	#	3.3	4.7
INDIANA	3759	9.8	#	#	9.5	#	17.5	11.1	#	0.0	31.1
IOWA	2120	#	8.0	8.0	28.0	11.4	17.5	13.6	#	8.0	15.2
KANSAS	2238	11.8	8.6	5.5	18.3	5.4	15.0	18.2	#	#	11.9
KENTUCKY	6329	37.6	19.5	#	21.9	#	#	#	#	0.0	8.6
LOUISIANA	8468	38.3	17.9	7.1	11.5	#	7.1	#	0.0	3.0	9.1
MARYLAND	5134	#	#	#	12.7	5.9	7.1	7.9	0.0	3.0	43.5
MICHIGAN	10650	3.3	4.7	3.3	17.2	8.5	21.4	16.8	2.5	#	25.5
MINNESOTA	4008	#	0.0	6.3	15.6	7.1	13.4	25.9	9.4	#	17.1
MISSISSIPPI	6903	44.1	11.8	5.3	11.0	#	5.5	#	#	3.0	15.0
MISSOURI	6155	18.4	17.1	#	29.0	#	9.2	#	#	#	13.2
NEBRASKA	858	#	#	#	16.6	#	16.4	16.4	9.9	3.0	22.8
NEW JERSEY	5550	19.6	13.7	#	13.7	#	17.7	9.8	0.0	#	11.8
NEW YORK	41116	9.6	3.3	2.0	8.8	6.1	16.9	15.0	2.2	#	35.9
NORTH CAROLINA	1754	40.0	14.4	#	#	#	#	#	0.0	0.0	7.5
NORTH DAKOTA	392	13.7	10.2	#	33.7	#	8.4	13.3	#	3.0	14.1
OHIO	21697	10.5	6.0	7.5	11.4	9.0	27.6	18.4	4.3	#	4.3
OKLAHOMA	4003	28.7	12.2	9.5	18.2	6.1	9.6	7.8	#	#	#
PENNSYLVANIA	10774	4.4	8.7	5.4	18.8	14.4	21.3	20.6	#	0.0	4.4
RHODE ISLAND	1963	#	5.6	#	5.7	#	12.4	15.2	#	#	44.2
SOUTH DAKOTA	638	19.2	7.5	#	36.1	6.4	7.7	15.5	#	0.0	9.6
TENNESSEE	5917	39.5	21.0	11.1	12.3	#	#	8.2	#	3.0	7.3
TEXAS	9033	33.5	15.2	8.4	2.2	3.0	10.2	5.7	#	#	15.7
VIRGINIA	3358	29.3	17.8	16.1	12.9	#	#	#	0.0	3.0	9.7
WEST VIRGINIA	6868	22.8	15.7	7.8	17.9	6.1	8.9	3.9	#	0.3	16.1
WISCONSIN	5834	#	6.0	#	17.1	12.4	18.4	28.2	4.8	#	6.1

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TABLE 47.--AFDC FAMILIES WITH NATURAL OR ADOPTIVE FATHER IN HOME, BY USUAL OCCUPATION OF FATHER, 1973

SPECIFIED NEW REGION AND STATE	TOTAL OF SUCH FAMILIES	WHITE COLLAR WORKERS				BLUE COLLAR WORKERS				FARM WORKERS	
		PROFESSIONAL, TECHNICAL, AND KINDRED WORKERS	MANAGERS, OFFICIALS, EXCEPT FARM	SALES WORKERS	CLERICAL AND KINDRED WORKERS	CRAFTSMEN AND KINDRED WORKERS	OPERATIVES, EXCEPT TRANSPORT	TRANSPORT EQUIPMENT OPERATIVES	LABORERS, EXCEPT FARM	FARMERS AND FARM MANAGERS	FARM LABORERS AND FARM FOREMEN
TOTAL:											
NUMBER	379048	2450	1627	2214	6421	47753	32691	25787	121578	5101	2040
PERCENT	100.0	0.6	0.4	0.6	1.7	12.6	8.5	6.8	32.2	1.3	0.5
NEW REGION:											
II	72237	1.0	0.0	0.7	3.8	6.5	4.9	4.7	34.1	#	36.0
III	48646	1.1	#	2.4	#	16.3	5.8	6.6	39.1	0.5	3.3
IV	42376	#	#	1.0	#	10.6	4.0	6.2	36.5	5.8	22.0
V	83593	1.0	0.6	2.7	0.9	11.7	12.8	8.4	43.8	#	3.1
VI	25192	#	0.0	#	#	9.8	2.1	7.3	34.2	4.1	25.7
VII	11371	#	#	1.7	1.2	10.7	4.4	5.3	40.4	3.7	25.1
VIII	8653	#	#	2.1	#	7.2	7.0	4.6	37.1	3.3	33.2
IX	62488	#	#	#	#	16.4	9.6	6.2	16.7	#	19.9
STATE:											
ALABAMA	3826	#	#	0.0	#	8.9	#	8.3	38.9	7.0	28.9
ARIZONA	2517	#	#	#	0.0	11.9	6.4	#	34.0	0.0	22.4
ARKANSAS	3057	#	#	0.0	0.0	6.2	#	#	29.4	7.9	41.2
CALIFORNIA	57401	0.7	0.0	0.7	#	11.7	10.2	6.8	35.3	#	19.5
COLORADO	5046	0.0	0.0	#	#	6.1	6.1	#	37.8	0.6	37.6
FLORIDA	5720	0.0	0.0	#	#	13.7	#	#	35.1	0.0	23.5
GEORGIA	8078	#	#	#	#	14.3	#	10.0	38.6	#	15.3
ILLINOIS	29045	1.0	0.0	#	#	9.6	19.5	9.4	30.7	0.0	5.3
INDIANA	3759	#	0.0	#	#	17.5	15.5	#	25.4	#	#
IOWA	2120	#	0.0	#	#	11.4	7.5	#	45.3	#	6.9
KANSAS	2238	#	#	#	#	15.0	8.7	8.6	35.5	#	#
KENTUCKY	6329	#	#	#	0.0	7.0	7.0	4.7	45.3	7.8	24.1
LOUISIANA	6466	#	#	#	0.0	9.9	#	#	32.1	#	29.3
MARYLAND	5134	#	#	#	#	16.9	10.1	9.2	41.4	0.0	3.5
MICHIGAN	15650	0.8	#	#	#	11.4	7.5	8.3	33.5	#	#
MINNESOTA	4008	#	#	#	0.0	7.9	4.7	4.7	27.6	13.4	25.1
MISSISSIPPI	6903	#	#	#	#	9.2	#	#	40.8	#	23.1
MISSOURI	6755	#	#	#	#	11.4	#	8.2	37.8	#	#
NEBRASKA	858	#	#	#	0.0	21.4	11.8	#	35.3	0.0	#
NEW JERSEY	5550	#	0.0	#	1.1	9.2	#	10.5	33.1	#	3.4
NEW YORK	41116	1.2	0.0	#	0.0	9.2	#	#	36.7	7.6	30.0
NORTH CAROLINA	3704	#	#	#	#	8.4	#	#	33.4	14.3	34.2
NORTH DAKOTA	392	#	#	#	0.0	15.2	7.5	8.4	44.3	0.0	#
OHIO	21497	0.8	#	#	#	10.4	#	4.4	44.7	#	22.4
OKLAHOMA	4003	#	#	#	1.1	10.7	11.7	5.0	30.1	6.8	0.0
PENNSYLVANIA	30276	0.8	0.0	#	0.0	30.2	21.5	7.6	34.3	0.7	28.2
RHODE ISLAND	1863	#	#	#	#	8.6	#	#	37.1	#	33.1
SOUTH DAKOTA	638	#	#	#	#	10.9	#	11.4	29.8	#	21.1
TENNESSEE	5317	0.3	#	#	#	#	14.6	#	41.9	0.0	8.1
TEXAS	9033	1.1	#	0.5	0.5	13.0	9.3	5.3	47.8	#	3.1
VIRGINIA	3358	#	#	#	#	15.8	9.4	6.0	41.0	0.0	5.1

(CONTINUED)

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TABLE 47.--AFDC FAMILIES WITH NATURAL OR ADOPTIVE FATHER IN HOME, BY USUAL OCCUPATION OF FATHER, 1973--CONTINUED

SPECIFIED NEW REGION AND STATE	TOTAL OF SUCH FAMILIES	SERVICE WORKERS				
		SERVICE WORKERS, EXCEPT PRIVATE HOUSEHOLD	PRIVATE HOUSEHOLD WORKERS	OCCUPATION UNKNOWN	UNKNOWN WHETHER EVER EMPLOYED	NEVER EMPLOYED
TOTAL:						
NUMBER	379048	26190	247	24603	18114	3842
PERCENT	100.0	6.9	0.1	6.5	4.8	1.0
NEW REGION:						
II	72237	5.5	0.0	10.8	9.3	2.2
III	48646	10.5	#	4.4	2.9	1.2
IV	42376	4.0	0.0	3.3	2.6	1.8
V	83593	6.3	#	4.8	4.2	#
VI	25192	9.4	#	1.8	2.1	0.8
VII	11371	5.5	0.0	8.1	3.8	#
VIII	8653	5.5	#	11.6	6.1	#
IX	62488	4.7	0.0	8.4	5.0	#
STATE:						
ALABAMA	3826	#	0.0	6.9	0.0	0.0
ARIZONA	2517	#	0.0	#	9.2	#
ARKANSAS	3057	5.3	#	0.0	#	#
CALIFORNIA	57401	4.2	0.0	7.6	5.1	0.0
COLORADO	5046	4.5	0.0	16.7	3.8	#
FLORIDA	5720	0.0	0.0	#	#	#
GEORGIA	8078	#	0.0	0.0	#	#
ILLINOIS	29045	7.8	#	#	5.5	0.0
INDIANA	3759	#	0.0	9.5	11.1	0.0
IOWA	2120	6.8	0.0	6.8	#	0.0
KANSAS	2238	5.4	0.0	8.6	#	#
KENTUCKY	6329	#	0.0	#	5.5	#
LOUISIANA	6466	8.3	0.0	#	#	#
MARYLAND	5134	11.3	0.0	16.9	#	0.0
MICHIGAN	15650	6.2	#	4.6	2.7	#
MINNESOTA	4008	5.2	0.0	8.3	#	0.0
MISSISSIPPI	6903	5.5	0.0	#	#	#
MISSOURI	6755	#	0.0	7.9	#	#
NEBRASKA	858	#	0.0	11.7	#	#
NEW JERSEY	5550	#	0.0	0.0	11.8	0.0
NEW YORK	41116	12.9	0.0	9.9	8.8	#
NORTH CAROLINA	3704	#	0.0	#	#	#
NORTH DAKOTA	392	5.4	#	#	10.2	0.0
OHIO	21497	4.5	0.0	7.5	3.7	#
OKLAHOMA	4003	#	0.0	#	#	#
PENNSYLVANIA	30276	13.1	0.0	#	#	#
RHODE ISLAND	1863	8.5	0.0	11.2	0.0	#
SOUTH DAKOTA	638	#	0.0	8.9	11.8	0.0
TENNESSEE	5317	11.1	0.0	#	#	0.0
TEXAS	9033	11.6	0.0	3.7	#	#
VIRGINIA	3358	#	#	9.7	#	0.0
WEST VIRGINIA	6868	2.5	0.0	5.0	5.0	2.9
WISCONSIN	5634	6.9	0.0	#	#	0.0

NOT COMPUTED: BASE TOO SMALL.

Appendix D

Amount of Monthly AFDC-UF Payments, by State July 1973 - June 1974

Source: USDHEW, National Center for Social Statistics, *Public Assistance Statistics*, NCSS Report A-2, Table 5 in monthly issues July 1973 through June 1974.

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Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, July 1973 1/

/Excludes vendor payments for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		June 1973 in--		July 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	98,671	456,105	274,692	$26,747,347	$271.03	$58.64	-5.6	-5.1	-20.4	-16.2
Calif.....	32,895	143,726	88,250	8,451,262	256.92	58.80	-7.7	-4.9	-23.2	-23.9
Colo.....	1,078	5,095	2,952	263,948	244.85	51.81	-10.2	-9.9	-47.5	-47.0
Del.....	72	355	211	12,392	172.11	34.91	-2.2	-3.5	-45.0	-44.8
D. C.....	2,356	9,269	6,677	443,151	188.09	47.81	+1.3	+.8	+45.9	+69.5
Guam.....	1	3	1	165	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
Hawaii.....	949	4,228	2,384	331,687	349.51	78.45	-7.3	-5.8	-15.2	-13.6
Ill.....	14,440	72,452	44,083	4,211,935	291.69	58.13	-4.8	-4.6	-16.1	-10.0
Kans.....	246	1,188	698	58,389	237.35	49.15	-17.6	-25.0	-51.6	-58.7
Md.....	776	3,506	2,029	158,867	204.73	45.31	-2.8	-2.9	-7.9	-4.6
Mass.....	2,553	12,325	7,665	715,242	280.16	58.03	+1.6	-23.0	+2.5	+1.4
Mich.....	10,360	51,076	30,577	3,393,069	327.52	66.43	-5.6	-5.6	-8.1	-7.6
Minn.....	1,423	6,490	3,732	451,078	316.99	69.50	-9.5	+12.5	-12.7	-19.7
Nebr.....	30	194	133	6,825	(3/)	35.18	-13.4	-14.3	-64.9	-68.5
N. Y.	6,357	38,554	18,269	4/ 2,194,324	345.18	71.82	-9.6	-4.2	-13.0	-4.2
Ohio.....	9,941	47,067	27,685	2,017,239	202.92	42.86	-2.4	-1.9	-16.8	-16.0
Okla.....	132	704	451	27,584	208.97	39.18	-15.8	-16.5	-51.1	-49.4
Oreg.....	2,434	10,107	5,705	633,652	260.33	62.69	-4.9	+18.8	-17.3	+.1
Pa.....	2,654	12,022	6,725	753,916	284.07	62.71	-5.6	-8.0	-28.1	-23.2
R. I.....	380	1,862	1,128	91,936	242.07	49.40	-.8	-3.2	-45.9	-46.5
Utah 5/.....	1,808	8,588	5,226	428,160	236.81	49.86	+4.9	+4.8	+.7	+.7
Vt.....	624	2,980	1,740	194,806	312.19	65.37	-8.7	-8.4	+9.4	+13.5
Wash.....	4,199	17,173	9,117	1,108,926	264.09	64.57	-2.9	-2.4	-23.7	-22.4
W. Va.....	945	4,663	2,980	196,180	207.60	42.07	-15.9	-13.0	-51.4	-25.9
Wis. 5/.....	2,018	10,478	6,278	602,564	298.59	57.51	+5.5	-12.0	-22.4	-31.0

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and 1 or both parents or 1 caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families; percentage change on fewer than 100 recipients.
4/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
5/ Estimated by State.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, August 1973 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		July 1973 in--		August 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	95,837	439,495	264,288	$26,181,909	$273.19	$59.57	-3.0	-1.6	-22.6	-19.2
Calif.....	31,581	137,431	84,174	8,142,492	257.83	59.16	-4.2	-3.7	-28.9	-25.9
Colo.....	992	4,716	2,744	243,545	245.51	51.64	-7.4	-7.7	-47.8	-47.9
Del.....	65	315	186	10,986	169.02	34.88	-11.3	-11.3	-53.0	-56.1
D. C.....	2,359	9,278	6,683	443,917	188.18	47.85	+.1	+.2	+39.6	+57.3
Hawaii.....	872	3,906	2,253	321,028	368.15	82.19	-7.6	-3.2	-21.5	-20.8
Ill.....	24,057	70,300	42,724	4,155,123	296.96	59.11	-3.0	-1.3	-19.9	-13.8
Kans.....	231	1,121	664	56,735	246.48	50.58	-5.6	-2.9	-54.1	-58.2
Md.....	772	3,544	2,055	161,072	208.64	45.45	+1.1	+1.4	-5.3	-5.1
Mass.....	2,579	12,340	7,660	733,390	284.37	59.43	+.1	+2.5	+2.7	+5.6
Mich.....	10,037	49,421	29,575	3,359,814	334.74	67.98	-3.2	-1.0	-17.6	-13.7
Minn.....	1,360	6,253	3,619	426,580	313.66	68.22	-3.7	-5.4	-15.6	-25.8
Nebr.....	24	156	107	5,672	3/	36.36	-19.6	-16.9	-91.8	-71.7
N. Y.....	6,177	29,538	17,600	4/ 2,145,431	347.33	72.63	-3.3	-2.2	-14.3	-10.3
Ohio.....	9,760	46,196	27,172	1,994,478	204.35	43.17	-1.9	-1.1	-17.9	-16.4
Okla.....	126	712	471	25,846	205.13	36.30	+1.1	-6.3	-46.9	-48.5
Oreg.....	2,514	10,056	5,656	664,952	264.50	66.12	-.3	+4.9	-18.3	+13.4
Pa.....	2,610	11,797	6,587	776,289	297.63	65.80	-1.9	+3.0	-25.4	-23.7
R. I.....	374	1,825	1,105	90,677	242.45	49.69	-2.0	-1.4	-47.1	-48.2
Utah 5/.....	1,933	7,624	4,809	382,995	198.14	50.24	-1.0	+15.7	-18.7	-19.0
Vt.....	613	2,892	1,678	190,612	310.95	65.91	-3.0	-2.2	+11.9	+16.8
Wash.....	4,213	17,113	9,028	1,113,696	264.35	65.08	-.3	+.4	-23.6	-20.3
W. Va.....	870	4,308	2,747	182,526	209.80	42.37	-7.6	-7.0	-47.1	-30.2
Wis.....	1,688	8,453	4,991	554,083	328.23	65.55	---	---	---	---

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families.
4/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
5/ Estimated by State.

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Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, September 1973 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		August 1973 in--		September 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total....	91,020	421,569	254,089	3/$26,070,428	3/ $286.43	3/ $61.84	-4.0	3/ -0.4	-24.1	3/ -18.7
Calif.....	29,541	129,677	79,662	8,053,648	272.63	62.11	-5.8	-1.1	-28.9	-23.5
Colo.....	993	4,690	2,717	242,086	243.79	51.62	-.6	-.6	-44.3	-44.3
Del.....	58	270	156	9,238	159.28	34.21	-14.3	-15.9	-59.5	-52.0
D. C.....	2,455	9,673	6,975	461,169	187.85	47.68	-4.3	+3.9	+42.7	+54.7
Hawaii.....	788	3,499	2,010	274,056	356.84	78.32	-10.4	-14.6	-29.3	-34.9
Ill.....	13,581	67,941	41,364	3,989,123	293.65	58.70	-3.4	-4.0	-20.7	-17.4
Kans.....	209	1,016	600	50,799	243.04	50.00	-9.4	-10.4	-54.9	-60.2
Md.....	657	3,018	1,727	135,177	205.75	44.79	-14.8	-16.1	-17.2	-16.0
Mass.....	2,595	12,390	7,680	3/ 1,156,612	3/ 445.71	3/ 93.35	+.4	3/ +57.7	+3.2	3/ -33.5
Mich.....	9,540	47,191	28,317	3,327,747	348.82	70.52	-4.5	-1.0	-23.6	-19.5
Minn.....	1,316	6,090	3,545	421,431	320.24	69.20	-2.6	-1.2	-15.4	-25.2
Nebr.....	22	140	98	5,174	(4/)	36.96	-10.3	-8.9	-72.1	-71.9
N. Y.....	6,012	28,737	17,107	5/ 2,090,251	347.68	72.74	-2.7	-2.6	-16.2	-10.2
Ohio 6/.....	9,760	46,196	27,172	1,994,478	204.35	43.17	---	---	---	---
Okla.....	112	591	377	23,166	206.84	39.20	-17.0	-10.4	-51.4	-48.7
Oreg.....	1,860	9,217	5,198	614,524	330.39	66.67	-8.3	-7.6	-24.7	-3.2
Pa.....	2,495	11,286	6,308	763,356	305.95	67.64	-4.3	-1.7	-26.0	-13.1
R. I.....	354	1,714	1,031	85,110	240.42	49.66	-6.1	-6.1	-49.4	-50.8
Utah 7/.....	1,608	6,914	4,362	312,646	194.43	45.22	-9.3	-18.4	-28.2	-35.8
Vt.....	625	2,939	1,702	193,617	309.79	65.88	+1.6	+1.6	+13.8	+16.7
Wash.....	4,110	16,679	8,786	1,135,387	276.25	68.07	-2.5	+1.9	-25.4	-23.3
W. Va.....	850	4,237	2,711	186,483	219.39	44.01	-1.6	+2.2	-43.3	-21.7
Wis.....	1,499	7,464	4,483	546,154	364.35	73.17	-8.4	-.2	-43.4	-37.0

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $310,000 representing grants for special needs in Massachusetts for the quarter, October-December 1973. The average payments and percentage changes are affected accordingly.
4/ Average payment not computed on base of fewer than 50 families.
5/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
6/ Represents data for August; September data not reported.
7/ Estimated by State.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, October 1973 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		September 1973 in--		October 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	89,124	411,459	248,381	$25,861,351	$290.17	$62.85	-2.1	-0.8	-24.6	-18.4
Calif.....	28,845	126,363	77,932	8,049,858	279.07	63.70	-2.6	(3/)	-30.6	-23.8
Colo.....	926	4,359	2,551	263,439	284.49	60.02	-6.4	+8.8	-45.8	-38.7
Del.....	44	205	120	6,838	(4/)	33.36	-24.1	-26.0	-63.1	-65.1
D. C.....	2,500	9,806	7,064	468,068	187.23	47.73	+1.4	+1.5	+24.3	+41.3
Hawaii.....	689	3,090	1,745	245,140	355.79	79.33	-11.7	-10.6	-36.8	-36.3
Ill.....	13,395	66,943	40,773	4,481,968	334.63	66.95	-1.5	+12.4	-20.3	-8.4
Kans.....	194	917	534	46,701	240.73	50.93	-9.7	-8.1	-56.1	-61.0
Md.....	642	2,868	1,669	132,007	205.62	46.03	-5.0	-2.3	-16.1	-15.0
Mass.....	2,619	12,435	7,698	759,395	289.96	61.07	+.4	-34.5	+4.3	+10.9
Mich.....	9,379	46,321	27,763	3,362,925	358.56	72.60	-1.8	+1.1	-21.4	-15.8
Minn.....	1,296	5,900	3,451	427,079	329.54	72.39	-3.1	+1.3	-20.4	-25.7
Mo.....	1	4	2	43	(4/)	(4/)	(5/)	(5/)	(5/)	(5/)
Nebr.....	18	112	76	3,934	(4/)	35.13	-20.0	-24.0	-74.9	-75.5
N. Y.....	5,735	27,717	16,538	6/ 2,019,836	340.55	72.97	-3.5	-3.4	-17.1	-10.2
Ohio 7/.....	9,760	46,196	27,172	1,994,478	204.35	43.17	---	---	---	---
Okla.....	103	528	332	25,079	243.49	47.50	-10.7	+8.3	-53.2	-40.1
Oreg.....	2,176	9,217	5,205	657,088	301.97	71.29	0	+6.9	-24.4	+4.6
Pa.....	2,558	11,353	6,454	581,676	231.70	51.17	+2.5	-22.5	-26.3	-35.2
R. I.....	326	1,568	943	76,092	233.41	48.53	-8.5	-10.6	-50.5	-53.5
Utah 7/.....	1,114	5,456	3,470	309,978	278.26	56.81	---	---	---	---
Vt.....	394	2,835	1,664	183,526	305.97	64.74	-3.5	-5.2	+11.0	+12.5
Wash.....	5,986	16,189	8,545	1,103,620	276.87	68.17	-2.9	-2.8	-27.0	-22.9
W. Va.....	768	3,825	2,454	158,210	205.80	41.36	-9.7	-15.2	-47.1	-48.7
Wis.....	1,393	7,012	4,226	494,373	354.90	70.50	-6.1	-9.5	-45.0	-41.4

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Decrease of less than 0.05 percent.
4/ Average payment not computed on base of fewer than 50 families or recipients.
5/ Program reinstated October 1973.
6/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
7/ Represents data for September; October data not reported.

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Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, November 1973 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		October 1973 in--		November 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	87,599	402,694	243,262	$25,172,275	$287.36	$62.51	-1.8	-3.0	-25.9	-20.3
Calif.....	28,675	125,387	77,479	7,331,296	255.67	58.47	-.8	-8.9	-31.3	-30.9
Colo.....	877	4,171	2,431	250,630	285.78	60.09	-5.0	-4.9	-46.6	-39.9
Del.....	49	220	123	7,443	(3/)	33.83	+7.3	+8.8	-54.7	-57.4
D. C. 4/.....	2,500	9,806	7,064	468,068	187.23	47.73	---	---	---	---
Hawaii.....	657	2,924	1,660	232,177	353.39	79.40	-5.4	-5.3	-41.4	-39.9
Ill.....	12,893	64,694	39,527	4,296,455	333.24	66.41	-3.4	-4.1	-21.9	-10.6
Kans.....	165	809	480	42,943	260.26	53.08	-11.8	-8.0	-57.4	-60.2
Md.....	611	2,772	1,613	129,021	211.16	46.54	-3.3	-2.3	-27.6	-24.6
Mass.....	2,622	12,475	7,719	804,882	306.97	64.52	+.3	+6.0	+4.0	+17.2
Mich.....	9,135	45,073	26,999	3,253,164	356.12	72.18	-2.7	-3.3	-21.4	-16.1
Minn.....	1,210	5,513	3,193	401,483	331.80	72.82	-6.6	-6.0	-25.7	-30.6
Mo.....	5	22	12	768	(3/)	(3/)	(3/)	(3/)	(3/)	(3/)
Nebr.....	17	111	76	4,039	(3/)	36.39	-.9	+2.7	-67.7	-67.3
N. Y.....	5,640	26,874	16,033	5/ 1,969,934	349.28	73.30	-3.0	-2.5	-20..	-12.5
Ohio.....	9,239	43,537	25,494	2,027,616	219.46	46.57	-2.7	-2.5	-16.8	-9.3
Okla.....	96	494	312	23,204	241.71	46.97	-6.4	-7.5	-54.9	-42.8
Oreg.....	2,448	9,377	5,275	704,826	287.92	75.17	+1.7	+7.3	-29.4	+12.9
Pa.....	2,464	11,069	6,147	712,180	289.03	64.34	-4.3	+20.4	-24.7	-20.2
R. I.....	331	1,654	1,018	7/ 131,435	(7/)	(7/)	+5.5	(7/)	-43.1	(7/)
Utah 8/.....	1,114	5,456	3,470	309,978	278.26	56.81	---	---	---	---
Vt.....	580	2,773	1,632	179,838	310.07	64.85	-2.2	-2.0	+8.1	+9.9
Wash.....	4,305	17,642	9,412	1,220,295	283.46	69.17	+9.0	+10.6	-27.9	-21.4
W. Va.....	627	3,154	2,058	138,390	220.72	43.88	-17.5	-12.5	-58.9	-60.0
Wis.....	1,339	6,687	4,035	532,210	397.47	79.59	-4.6	+7.7	-45.0	-32.9

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
4/ Represents data for October; November data not reported.
5/ Program reinstated October 1973.
6/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
7/ Average payment and percentage changes not computed; payments made bi-weekly.
8/ Represents data for September; October and November data not reported.

Table 8.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, December 1973 1/

/Excludes vendor payments for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		November 1973 in--		December 1972 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	90,681	415,513	250,547	3/ $26,293,045	3/ $289.95	3/ $63.28	+3.2	3/ +4.4	-26.0	3/ -20.5
Calif.....	30,299	132,826	81,809	8,031,108	265.06	60.55	+5.8	+9.5	-29.7	-28.2
Colo.....	913	4,331	2,514	260,147	284.94	60.07	+3.8	+3.8	-46.2	-39.8
Del.....	59	266	148	8,828	149.63	33.31	+20.5	+18.6	-47.9	-51.2
D. C.....	2,621	10,190	7,371	477,232	182.08	46.79	+2.8	+.9	+17.0	+25.7
Hawaii.....	585	2,594	1,448	201,145	343.84	77.54	-11.3	-13.4	-46.6	-49.0
Ill.....	12,645	63,834	39,140	4,175,316	330.20	65.41	-1.3	-2.8	-25.1	-15.4
Kans.....	260	795	457	41,216	237.60	53.18	-4.2	-4.0	-61.6	-62.5
Md.....	577	2,656	1,555	121,761	211.02	45.88	-4.3	-5.6	-33.5	-31.0
Mass.....	2,639	12,572	7,760	3/ 963,981	3/ 365.28	3/ 76.68	+.8	3/ +19.8	-1.5	3/ +11.9
Mich.....	9,457	46,573	27,844	3,369,714	356.32	72.35	+3.3	+3.6	-20.2	-14.0
Minn.....	1,184	5,427	3,149	381,860	322.52	70.49	-1.7	-4.9	-30.6	-39.0
Mo.....	5	22	12	853	(4/)	(4/)	(4/)	(4/)	(5/)	(5/)
Nebr.....	16	103	72	3,753	(4/)	36.44	-7.2	-7.1	-72.8	-72.3
N. Y.....	5,630	27,094	16,229	6/ 2,019,585	358.72	74.54	+.8	+2.5	-22.6	-14.1
Ohio.....	9,096	42,910	25,147	1,997,393	219.59	46.54	-1.4	-1.5	-17.0	-9.5
Okla.....	92	497	303	22,469	244.23	47.10	-3.4	-3.2	-57.0	-44.8
Oreg.....	3,399	13,748	8,857	982,745	289.13	77.09	+35.9	+39.4	-13.4	+31.1
Pa.....	2,305	10,192	5,570	538,257	233.52	52.92	-8.1	-24.4	-30.6	-44.2
R. I.....	321	1,604	986	87,520	(7/)	(7/)	-3.0	(7/)	-41.8	(7/)
Utah 8/.....	1,144	5,627	3,566	311,540	272.33	55.37	---	---	---	---
Vt.....	583	2,784	1,636	192,817	330.73	69.26	+.4	+7.2	+7.0	+15.7
Wash.....	4,810	19,973	10,739	1,414,529	294.08	70.82	+13.2	+15.9	-26.3	-17.9
W. Va.....	680	3,381	2,171	155,902	229.27	46.11	+7.2	+12.7	-61.6	-58.2
Wis.....	1,461	6,766	4,062	533,375	365.08	78.83	+1.2	+.2	-43.3	-36.4

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $314,000 representing grants for special needs in Massachusetts for the quarter January-March 1974. The average payments and percentage changes are affected accordingly.
4/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
5/ Program reinstated October 1973.
6/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
7/ Average payment and percentage changes not computed; payments made bi-weekly.
8/ Represents data for October; November and December data not reported.

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Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, January 1974 1/

/Excludes vendor payments for medical care and cases receiving only such payments/

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		December 1973 in--		January 1973 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	95,898	439,050	264,164	$27,802,561	$289.92	$63.32	+5.7	+5.7	-24.7	-18.5
Calif.....	32,762	142,747	88,857	8,562,222	261.35	59.98	+7.6	+6.6	-26.7	-25.2
Colo.....	1,135	5,312	3,057	320,844	282.68	60.40	+22.7	+23.3	-39.8	-32.7
Del.....	63	281	159	9,293	147.51	33.07	+6.0	+5.3	-43.2	-47.1
D. C.....	2,638	10,267	7,435	481,972	182.70	46.94	+.7	+1.0	+32.3	+29.8
Hawaii.....	603	2,665	1,491	212,080	351.71	79.58	+2.7	+5.4	-46.3	-44.9
Ill.....	13,112	65,978	40,380	4,468,334	340.78	67.72	+3.4	+7.0	-26.1	-14.5
Iowa.....	17	73	39	4,985	(3/)	68.29	(4/)	(4/)	(4/)	(4/)
Kans.....	211	1,000	584	52,316	247.94	52.32	+29.0	+26.9	-53.4	-55.5
Md.....	869	3,930	2,276	187,008	215.20	47.58	+48.1	+53.6	-17.0	-10.8
Mass.....	1,541	7,017	3,957	500,123	324.54	71.27	(5/)	(5/)	(5/)	(5/)
Mich.....	10,419	50,809	30,143	3,672,050	352.44	72.27	+9.1	+9.0	-15.5	-9.7
Minn.....	1,195	5,512	3,205	405,461	339.30	73.56	+1.8	+6.2	-33.2	-35.6
Mo.....	6	25	13	896	(3/)	(3/)	(3/)	(3/)	(6/)	(6/)
Nebr.....	18	115	79	4,185	(3/)	36.39	+11.7	+11.5	-69.8	-70.4
N. Y.....	5,737	27,513	16,375	7/ 2,225,173	387.86	80.88	+1.5	+10.2	-23.7	-10.1
Ohio.....	9,652	45,319	26,421	2,104,102	218.00	46.43	+5.6	+5.3	-13.4	-6.0
Okla.....	78	414	265	18,429	236.27	44.51	-13.2	-18.0	-66.7	-69.9
Oreg.....	3,756	15,830	8,604	917,629	244.31	57.97	+24.2	-6.6	-11.7	+3.0
Pa.....	2,359	10,372	5,666	666,626	282.59	64.27	+2.0	+23.8	-32.1	-22.4
R. I.....	351	1,715	1,036	103,919	(8/)	(8/)	+6.9	(8/)	-41.9	(8/)
Utah 9/.....	1,094	5,542	3,498	325,759	297.77	58.78	---	---	---	---
Vt.....	622	2,950	1,730	206,774	332.43	70.09	+6.0	+7.2	+4.7	+12.8
Wash.....	5,448	22,832	12,326	1,586,095	291.13	69.47	+14.3	+12.1	-22.8	-14.9
W. Va.....	747	3,686	2,310	290,000	254.35	51.97	+8.1	+21.9	-61.2	-53.4
Wis.....	1,465	7,176	4,258	576,286	393.37	80.31	+6.1	+8.0	-42.4	-37.5

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
4/ Program initiated January 1974.
5/ Not computed; data not comparable.
6/ Program reinstated October 1973.
7/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
8/ Average payment and percentage changes not computed; payments made bi-weekly.
9/ Represents data for December; January data not reported.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, February 1974 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		January 1974 in--		February 1973 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	101,325	460,943	277,337	$29,385,816	$290.02	$63.75	+5.0	+5.7	-21.8	-15.1
Calif.....	33,997	147,543	91,734	8,866,439	260.80	60.09	+3.4	+3.6	-25.7	-23.5
Colo.....	1,443	6,619	3,754	402,822	279.16	60.86	+24.6	+25.6	-24.8	-15.9
Del.....	65	292	161	10,101	155.40	34.59	+3.9	+8.7	-42.4	-42.6
D. C.....	2,681	10,403	7,533	481,808	179.71	46.31	+1.3	(3/)	+34.6	+27.0
Hawaii.....	603	2,673	1,489	217,109	360.05	81.22	+.3	+2.4	-46.4	-43.8
Ill.....	23,332	66,916	40,871	4,390,778	329.34	65.62	+1.4	-1.7	-25.4	-15.8
Iowa.....	40	178	98	15,374	(4/)	86.37	(4/)	(4/)	(5/)	(5/)
Kans.....	249	1,173	682	63,800	256.59	54.47	+17.3	+22.1	-46.6	-46.2
Md.....	815	3,685	2,125	281,610	222.10	49.12	-6.2	-3.2	-25.8	-18.2
Mass.....	1,750	7,920	4,657	523,882	299.36	66.15	+12.9	+4.8	(6/)	(6/)
Mich.....	11,040	53,591	31,651	3,911,005	354.26	72.98	+5.5	+6.5	-11.8	-5.4
Minn.....	1,228	5,628	3,266	417,800	340.23	74.24	+2.1	+3.0	-32.8	-31.8
Mo.....	10	40	20	1,498	(4/)	(4/)	(4/)	(4/)	(7/)	(7/)
Nebr.....	21	133	91	4,849	(4/)	36.46	+15.7	+15.9	-63.2	-62.3
N. Y.....	7,064	32,226	19,720	8/ 2,914,543	412.59	90.44	+17.1	+31.0	-11.7	+16.0
Ohio.....	10,192	47,414	27,475	2,209,869	216.82	46.61	+4.6	+5.0	-12.5	-5.0
Okla.....	103	521	324	23,930	232.33	45.93	+25.8	+29.8	-58.0	-58.1
Oreg.....	4,004	16,852	9,054	984,466	245.87	58.42	+6.5	+7.3	-2.1	+10.5
Pa.....	2,353	10,283	5,563	524,174	222.77	50.97	-.9	-21.4	-31.3	-44.7
R. I.....	392	1,882	1,122	112,841	(9/)	(9/)	+9.7	(9/)	-36.7	(9/)
Utah 10/.....	1,103	5,652	3,567	334,757	303.50	59.18	---	---	---	---
Vt.....	705	3,327	1,942	234,428	332.52	70.46	+12.8	+13.4	+6.7	+15.3
Wash.....	5,720	24,039	13,006	1,726,177	301.78	71.81	+5.3	-8.8	-17.4	-7.8
W. Va.....	836	4,081	2,580	193,742	231.75	47.47	+11.6	+2.0	-55.1	-52.8
Wis.....	1,579	7,867	4,632	638,524	404.39	81.16	+9.6	+10.8	-38.3	-27.5

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Decrease of less than 0.05 percent.
4/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
5/ Program initiated January 1974.
6/ Not computed; data not comparable.
7/ Program reinstated October 1973.
8/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.
9/ Average payment and percentage changes not computed; payments made bi-weekly.
10/ Represents data for January; February data not reported.

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Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, March 1974 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
		Total 2/	Children	Total amount	Average per--		February 1974 in--		March 1973 in--	
					Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	102,627	465,780	279,770	3/ $29,815,344	3/ $290.52	3/ $64.01	+1.0	3/ +1.4	-21.5	3/ -14.7
Calif.....	34,493	149,864	93,230	8,995,512	260.87	60.02	+1.6	+1.5	-26.1	-22.6
Colo.....	1,541	6,994	3,931	417,241	270.76	59.66	+5.7	+3.6	-19.8	-8.1
Del.....	68	306	169	10,552	155.18	34.48	+4.8	+4.5	-38.2	-38.5
D. C.....	2,754	10,638	7,693	494,214	179.45	46.46	+2.3	+2.6	+23.7	+17.0
Hawaii.....	620	2,773	1,557	217,646	351.04	78.49	+3.7	+.2	-46.1	-44.6
Ill.....	23,225	66,440	40,585	4,400,061	332.46	66.23	-.7	+.2	-25.6	-18.9
Iowa.....	79	372	215	29,117	368.57	78.27	+109.0	+89.4	(4/)	(4/)
Kans.....	245	1,169	686	62,392	254.66	53.37	-.3	-2.3	-44.2	-46.9
Md.....	788	3,251	1,891	167,232	212.22	51.44	-11.8	-7.6	-28.4	-23.4
Mass.....	1,886	8,510	4,995	3/ 794,259	3/ 421.13	3/ 93.33	+7.4	3/ +51.6	-29.5	3/ -14.3
Mich.....	11,704	56,563	33,289	4,095,388	349.91	72.40	+5.5	+4.7	-7.9	-1.7
Minn.....	1,221	5,632	3,270	416,820	343.01	74.36	+.1	+.2	-31.8	-33.2
Mo.....	12	47	23	1,784	(5/)	(5/)	(5/)	(5/)	(6/)	(6/)
Nebr.....	22	134	90	4,905	(5/)	36.60	-.8	+1.2	-64.8	-64.4
N. Y.....	6,427	29,372	18,024	7/ 2,554,928	397.53	86.40	-8.2	-12.3	-20.3	-2.1
Ohio.....	10,682	49,447	28,597	2,304,840	215.77	46.61	+4.3	+4.3	-10.7	-3.4
Okla.....	107	536	334	25,609	239.34	47.78	+2.9	+7.0	-58.7	-46.9
Oreg.....	4,028	16,603	8,880	999,898	248.24	60.22	-1.5	+1.6	+1.4	+23.3
Pa.....	2,176	9,504	5,158	557,888	256.38	58.70	-7.6	+6.4	-36.0	-39.4
R. I.....	387	1,828	1,074	112,656	291.10	61.63	-2.9	-.2	-36.2	-21.6
Utah.....	1,214	6,056	3,784	361,538	297.89	59.72	+3.7	+2.1	-34.4	-23.3
Vt.....	785	3,654	2,104	259,427	330.48	71.00	+9.8	+10.7	+4.8	+13.8
Wash.....	5,670	23,780	12,869	1,672,371	294.95	70.33	-1.1	-3.1	-13.1	-1.7
W. Va.....	831	4,049	2,581	174,509	210.00	43.10	-.8	-9.9	-55.0	-54.3
Wis.....	1,662	8,058	4,741	682,457	410.62	84.69	+2.4	+6.9	-35.7	-19.1

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $213,000 representing grants for special needs in Massachusetts for the quarter April-June 1974. The average payments and percentage changes are affected accordingly.
4/ Program initiated January 1974.
5/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
6/ Program reinstated October 1973.
7/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.

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Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, April 1974 1/

(Excludes vendor payments for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		March 1974 in--		April 1973 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	99,941	455,400	273,315	$28,729,652	$287.55	$63.09	-2.2	-3.6	-19.6	-12.2
California.....	32,988	144,246	89,791	8,574,814	259.94	59.45	-3.7	-4.7	-26.5	-21.6
Colorado.....	1,511	6,714	3,720	392,636	259.85	58.48	-4.0	-5.9	-14.1	-3.4
Delaware.....	65	298	169	10,219	157.22	34.29	-2.6	-3.2	-36.1	-37.7
Dist. of Col...	2,829	10,863	7,855	589,205	207.99	54.15	+2.1	+19.0	+21.8	+38.2
Guam.....	1	6	4	270	(3/)	(3/)	(4/)	(4/)	(4/)	(4/)
Hawaii.....	626	2,815	1,586	229,981	365.78	81.34	+1.5	+5.2	-44.7	-41.3
Illinois.....	12,516	63,005	38,595	4,109,914	328.37	65.23	-5.2	-6.6	-26.1	-18.5
Iowa.....	110	502	283	37,375	339.77	74.45	+34.9	+28.4	(5/)	(5/)
Kansas.....	231	1,076	619	58,194	251.92	54.08	-8.0	-6.7	-45.5	-45.4
Maryland.....	585	2,950	1,741	126,142	215.63	42.76	-9.3	-24.6	-30.6	-36.7
Massachusetts..	2,038	9,127	5,312	622,920	305.65	68.25	+7.3	-21.6	-24.8	-8.0
Michigan.....	12,217	58,997	34,676	4,261,521	348.82	72.23	+4.3	+4.1	-.5	+6.0
Minnesota.....	1,173	5,444	3,171	406,209	346.30	74.62	-3.3	-3.0	-32.4	-32.1
Missouri.....	10	35	15	1,430	(3/)	(3/)	(3/)	(3/)	(6/)	(6/)
Nebraska.....	24	149	101	5,484	(3/)	36.81	+11.2	+11.8	-53.1	-52.1
New York.....	6,019	28,445	17,308	7/ 2,350,032	390.44	82.62	-3.8	-8.0	-20.9	-8.7
Ohio.....	10,847	49,762	28,564	2,331,710	214.96	46.86	+.6	+1.2	-6.9	+1.7
Oklahoma.....	94	467	290	22,861	243.20	48.95	-12.9	-10.7	-59.0	-46.6
Oregon.....	3,815	16,026	8,643	983,810	257.88	61.39	-3.3	-1.6	+8.8	+31.8
Pennsylvania...	2,220	9,628	5,196	577,890	260.31	60.02	+1.3	+3.6	-32.3	-32.0
Rhode Island...	367	1,727	1,010	105,185	286.61	60.91	-5.5	-6.6	-30.8	-18.3
Utah.....	1,156	5,796	3,632	350,271	303.00	60.43	-4.3	-3.1	-34.0	-21.9
Vermont.....	862	4,044	2,341	288,191	334.33	71.26	+10.7	+11.1	+5.8	+14.6
Washington.....	5,294	21,880	11,782	1,527,010	288.49	69.79	-8.0	-8.7	-7.5	+.6
West Virginia..	688	3,363	2,146	145,051	210.83	43.13	-16.9	-16.9	-56.0	-53.9
Wisconsin.....	1,636	8,035	4,747	623,307	380.99	77.57	-.3	-8.7	-23.0	-13.2

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
4/ No payments made in prior period.
5/ Program initiated January 1974.
6/ Program reinstated October 1973.
7/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.

Table 5.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, May 1974 1/

(Excludes vendor payments for medical care and cases receiving only such payments)

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		April 1974 in--		May 1973 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	94,762	432,234	259,336	$27,109,440	$286.08	$62.72	-5.1	-5.6	-17.6	-10.8
California.....	30,594	134,528	83,547	7,857,562	256.83	58.41	-6.7	-8.4	-23.7	-21.4
Colorado.....	1,282	5,704	3,167	331,376	258.48	58.10	-15.0	-15.6	-16.7	-7.2
Delaware.....	57	256	143	9,268	162.60	36.20	-14.1	-9.3	-44.9	-41.5
Dist. of Col...	2,922	11,168	8,064	596,328	204.08	53.40	+2.8	+1.4	+24.1	+38.1
Hawaii.....	629	2,787	1,550	223,309	355.02	80.13	-1.0	-2.5	-43.0	-41.7
Illinois.....	11,866	59,679	36,589	3,878,835	326.89	64.99	-5.3	-5.6	-26.4	-19.5
Iowa.....	113	522	297	35,575	314.82	68.15	+4.0	-4.8	(3/)	(3/)
Kansas.....	200	923	527	47,902	239.51	51.90	-14.2	-17.7	-47.0	-43.2
Maryland.....	486	2,183	1,271	108,404	223.05	49.66	-26.0	-14.1	-45.5	-42.9
Massachusetts..	2,078	9,339	5,435	661,474	318.32	70.83	+2.3	+6.2	-23.7	-2.4
Michigan.....	12,208	58,952	34,644	4,250,609	348.18	72.10	-.1	-.3	+3.1	+11.1
Minnesota.....	1,103	5,120	2,994	379,201	343.79	74.06	-6.0	-6.6	-35.8	-32.5
Missouri.....	9	32	14	1,302	(3/)	(4/)	(4/)	(4/)	(5/)	(5/)
Nebraska.....	17	108	74	4,067	(3/)	37.66	-27.5	-25.8	-54.8	-50.4
New York.....	5,675	26,835	16,368	6/ 2,261,711	398.56	84.28	-5.7	-3.8	-22.4	-8.6
Ohio.....	10,770	49,255	28,181	2,304,860	214.01	46.79	-1.0	-1.2	-2.6	+6.2
Oklahoma.....	83	418	265	20,604	248.24	49.29	-10.5	-9.9	-58.0	-45.3
Oregon.....	3,322	13,725	7,425	878,485	264.44	64.01	-14.4	-10.7	+8.7	+37.5
Pennsylvania...	2,267	9,861	5,339	657,754	290.14	66.70	+2.4	+13.8	-26.7	-23.5
Rhode Island...	313	1,492	878	83,790	267.70	56.16	-13.6	-20.3	-32.4	-24.4
Utah.....	1,066	5,401	3,398	326,397	306.19	60.43	-6.8	-6.8	-34.1	-19.0
Vermont.....	911	4,281	2,481	282,743	310.37	66.05	+5.9	-1.9	+22.2	+23.4
Washington.....	4,646	19,024	10,248	1,236,488	266.14	65.00	-13.1	-19.0	-1.6	+3.0
West Virginia..	566	2,836	1,813	114,016	201.44	40.20	-15.7	-21.4	-57.0	-58.5
Wisconsin.....	1,579	7,805	4,624	557,380	353.00	71.41	-2.9	-10.6	-27.8	-13.5

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2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Program initiated January 1974.
4/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
5/ Program reinstated October 1973.
6/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.

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Table 2.--Aid to families with dependent children, unemployed-father segment: Recipients of money payments and amount of payments, by State, June 1974 1/

[Excludes vendor payments for medical care and cases receiving only such payments]

State	Number of families	Number of recipients		Payments to recipients			Percentage change from--			
					Average per--		May 1974 in--		June 1973 in--	
		Total 2/	Children	Total amount	Family	Recipient	Number of recipients	Amount	Number of recipients	Amount
Total.....	85,263	402,866	241,333	3/$25,341,357	3/ $286.77	3/ $62.83	-6.8	3/ -6.6	-16.5	3/ -10.0
California.....	27,848	122,047	75,532	7,216,642	259.16	59.13	-9.3	-8.2	-21.6	-18.5
Colorado.....	1,123	5,013	2,797	291,127	259.24	58.07	-12.1	-12.1	-11.6	-.6
Delaware.....	47	216	123	7,872	(4/)	35.52	-15.6	-17.2	-40.3	-40.3
Dist. of Col...	2,960	14,228	8,104	596,580	201.55	53.13	+.5	(5/)	+22.7	+35.7
Guam.....	3	15	9	755	(4/)	(4/)	(6/)	(6/)	(6/)	(6/)
Hawaii.....	567	2,552	1,438	201,620	355.59	79.00	-8.4	-9.7	-44.0	-42.8
Illinois.....	11,561	58,147	35,685	3,757,792	325.05	64.60	-2.5	-3.1	-23.6	-14.9
Iowa.....	113	512	286	36,997	283.15	62.49	-1.9	-10.1	(7/)	(7/)
Kansas.....	155	736	429	40,663	262.34	55.25	-20.3	-15.1	-49.0	-47.8
Maryland.....	447	1,984	1,150	98,261	215.35	48.52	-9.1	-11.2	-45.0	-41.1
Massachusetts..	2,111	9,439	5,493	3/ 838,416	3/ 397.17	3/ 88.82	+1.1	3/+26.7	-22.2	3/ -9.8
Michigan.....	11,763	56,917	33,525	4,059,434	345.13	71.30	-3.4	-4.5	+5.2	+12.9
Minnesota.....	968	4,555	2,673	333,839	344.88	73.29	-11.0	-12.0	-36.5	-35.3
Missouri.....	8	30	14	1,204	(4/)	(4/)	(4/)	(5/)	(8/)	(8/)
Nebraska.....	21	123	82	4,589	(4/)	37.31	+13.9	+12.8	-45.1	-42.4
New York.....	4,560	22,161	13,283	9/ 1,745,154	382.72	78.75	-17.4	-22.8	-34.4	-23.8
Ohio.....	10,722	48,958	27,967	2,282,766	212.93	46.63	-.6	-1.0	+1.5	+11.0
Oklahoma.....	70	361	229	17,756	253.66	49.19	-13.6	-13.8	-36.8	-46.3
Oregon.....	2,918	12,074	6,596	774,359	265.37	64.13	-12.0	-11.9	+13.6	+45.2
Pennsylvania...	2,198	9,517	5,126	615,634	280.09	64.69	-3.5	-6.4	-25.3	-24.9
Rhode Island...	237	1,132	672	75,303	317.73	66.52	-24.1	-10.1	-39.7	-20.7
Utah.....	1,019	5,136	3,226	311,042	305.24	60.56	-4.9	-4.7	-37.3	-23.9
Vermont.....	798	3,759	2,177	231,893	290.59	61.69	-12.2	-18.0	+15.1	+9.0
Washington.....	4,138	16,808	9,035	1,182,288	285.71	70.34	-11.6	-4.4	-4.9	+4.1
West Virginia..	424	2,128	1,353	89,846	211.90	42.22	-25.0	-21.2	-61.6	-60.2
Wisconsin.....	1,484	7,278	4,329	306,406	341.24	69.58	-6.8	-9.1	-23.2	-17.5

1/ Data for this segment of the program, shown separately here, are included in data for the total program. All data subject to revision.
2/ Includes as recipients the children and one or both parents or one caretaker relative other than a parent in families in which the requirements of such adults were considered in determining the amount of assistance.
3/ Amount includes $236,000 representing grants for special needs in Massachusetts for the quarter July-September 1974. The average payments and percentage changes are affected accordingly.
4/ Average payment not computed on base of fewer than 50 families or recipients; percentage change on fewer than 100 recipients.
5/ Increase of less than 0.05 percent.
6/ No payments made in prior periods.
7/ Program initiated January 1974.
8/ Program reinstated October 1973.
9/ Payments for some months fluctuate noticeably due to the influence of retroactive payments.

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see 74-132